

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1976
Extraordinary Session, 1975
First Extraordinary Session, 1976

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FOREWORD

This volume contains the Acts of the Second Regular session of the 62nd Legislature, Extraordinary Session (1975) and the First Extraordinary Session (1976) of the 62nd Legislature.

Regular Session, 1976

The second regular session of the 62nd Legislature convened on January 14, 1976, for the sixty-day annual session, expiring at midnight, March 13, 1976. However, for the sixth time in the history of the State, the session was extended by concurrent resolution as provided by Section 22, Article VI of the Constitution through the 30th day of June, 1976. On March 17, the Legislature took an adjournment until 6:00 P.M., Friday, May 14, 1976, and adjourned sine die on May 15, 1976.

Bills totaling 1,744 were introduced in the two houses during the session—1,091 House and 653 Senate.

The Legislature passed 139 bills during the session—73 House and 66 Senate. The Governor approved 129 bills and vetoed eleven. Vetoes of six bills were overridden. One bill vetoed by the Governor was amended by the Legislature and subsequently approved by the Governor.

There were 96 concurrent resolutions introduced during the session, 65 House and 31 Senate, of which six House and six Senate were adopted. Thirty-three House and 21 Senate Joint Resolutions were introduced, none of which were adopted. The House had 29 House Resolutions and the Senate had 18 Senate Resolutions, of which 14 House and 14 Senate were adopted.

Upon final adjournment, there were 64 House bills passed by the House pending in the Senate and 78 Senate bills passed by the Senate pending in the House.

Two House bills and three Senate bills died in conference. They were H. B. 1525, delegation of power by the State Board of Education to operate multi-county vocational centers to an administrative council; H. B. 1643, dealing with the Public Service Commission—appointment, term, salaries, etc., of members; employees and hearings; opinions supporting orders; procedure for changing public utility rates; creating office of public counsel; annual report; powers generally, etc.; S. B. 263, medical liability insurance; S. B. 297, inspection fees for motor vehicles; and S. B. 364, authority of county boards of education to govern sale of foods, soft drinks, confections, etc., on school property, other than elementary school property.

Extraordinary Session, 1975

The 1975 Extraordinary Session of the Legislature convened on July 29, 1975, and adjourned sine die on November 5, 1975. On August 5, the Legislature took an adjournment until November 1, 1975.

There were 167 bills introduced in the two houses—94 House and 73 Senate, dealing with the 19 items of business proclaimed by the Governor for consideration. The Legislature passed 12 bills—six House and six Senate. The Governor approved 11 and vetoed one of the bills passed. One House bill, passed by the House, was not passed by the Senate.

There were 16 Concurrent Resolutions introduced—12 House and four Senate, of which three House and three Senate were adopted. One Joint Resolution, proposing an amendment to the State Constitution, was introduced in the Senate, but was not adopted. The House had eight House Resolutions and the Senate had 11 Senate Resolutions, of which five House and all 11 Senate were adopted by the respective houses.

First Extraordinary Session, 1976

This session convened on June 21, 1976, and concluded its business on June 24, 1976.

During the session, 91 bills were introduced in the two houses—46 House and 45 Senate—dealing with the 37 items set forth in the proclamation of the Governor convening the session. The Legislature passed eight bills—seven House and one Senate. All eight bills were approved by the Governor. Two House bills, passed by the House, were not passed by the Senate, and one Senate bill sent to the House was not passed. Two Concurrent Resolutions were introduced in the House, but were not adopted. The Senate did not have any Concurrent Resolutions. There were four House Resolutions, all adopted, and nine Senate Resolutions, all adopted.

This volume may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston, West Virginia 25305.

C. A. BLANKENSHIP, Clerk
House of Delegates

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MEMBERS OF THE SENATE

REGULAR SESSION, 1976

OFFICERS

President—W. T. Brotherton, Jr., Charleston

Clerk—J. C. Dillon, Jr., Hinton

Sergeant at Arms—John E. Howell, Charleston

Doorkeeper—E. L. Bevins, Williamson

District	Name	Address
First	Judith A. Herndon (R) *Samuel N. Kusic (R)	Wheeling Weirton
Second	William L. Gilligan (R) *Roy H. Rogerson (R)	Sistersville Moundsville
Third	Russell G. Beall (D) *J. Frank Deem (R)	Parkersburg St. Marys
Fourth	Robert F. Hatfield (D) *Orton A. Jones (R)	Hurricane Spencer
Fifth	*H. Darrel Darby (D) Robert R. Nelson (D)	Huntington Huntington
Sixth	*John Pat Fanning (D) Lafe P. Ward (D)	Iaeger Williamson
Seventh	J. Robert Rogers (D) *Todd C. Willis (D)	Madison Logan
Eighth	*Marlo J. Palumbo (D) Roland Savilla (D)	Charleston St. Albans
Ninth	*Warren R. McGraw (D) Alan L. Susman (D)	Pineville Beckley
Tenth	*Jack L. Hellems (D) *Odell H. Huffman (D)	Hinton Princeton
Eleventh	*Patrick R. Hamilton (D) Ralph D. Williams (D)	Oak Hill Rainelle
Twelfth	*Richard Benson (D) Carl E. Gainer (D)	Elkins Richwood
Thirteenth	W. Walter Neeley (D) *William R. Sharpe, Jr. (D)	Clarksburg Weston
Fourteenth	*James L. Davis (D) William A. Moreland (D)	Fairmont Morgantown
Fifteenth	C. N. Harman (R) *J. D. Hinkle, Jr. (R)	Grafton Buckhannon
Sixteenth	*William J. Oates, Jr. (D) Robert M. Steptoe (D)	Romney Martinsburg
Seventeenth	*William T. Brotherton, Jr. (D) Si Galperin, Jr. (D)	Charleston Charleston

¹ Appointed June 17, 1975, to fill the vacancy created by the resignation of the Honorable J. C. Dillon, Jr.

* Elected in 1972. All others elected in 1974.

(D) Democrats	26
(R) Republicans	8
Total	34

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1976

OFFICERS

Speaker—Lewis N. McManus, Beckley

Clerk—C. A. Blankenship, Pineville

Sergeant at Arms—Oce W. Smith, Jr., Fairmont

Doorkeeper—Dannie Wingo, Yukon

District	Name	Address
First	Gust G. Brenda, Jr. (D)	Weirton
	George P. Gvoyich (D)	Weirton
Second	Charles Donley (D)	Wellsburg
	Pamela Sue Shuman (D)	Wellsburg
Third	James E. Altmeyer (R)	Wheeling
	Michael J. Moyle (R)	Wheeling
	Paul J. Otte (R)	Wheeling
	George H. Seibert, Jr. (R)	Wheeling
Fourth	Dan Tonkovich (D)	Benwood
	Larry Wiedebusch (D)	Glen Dale
Fifth	Joseph M. Ballouz (D)	New Martinsville
Sixth	Larry D. Swann (R)	Salem
Seventh	Harry E. Moats (R)	Harrisville
Eighth	Joseph P. Albright (D)	Parkersburg
	Stephen C. Bird (D)	Parkersburg
	George E. Farley (D)	Parkersburg
	M. E. Mowery (D)	Parkersburg
	Donza T. Worden (D)	Parkersburg
Ninth	Richard L. Miller (D)	Spencer
Tenth	William J. Artrip (D)	South Side
	Charles H. Damron (D)	Fraziers Bottom
	John E. Fitzgerald (D)	Ravenswood
	Raymond Peak (D)	Hurricane
Eleventh	Robert Lee Childers (D)	Huntington
	Albert C. Esposito (R)	Huntington
	Hugh A. Kincaid (D)	Huntington
	Charles M. Polan, Jr. (D)	Huntington
	G. Michele Prestera (D)	Huntington
Twelfth	Forest Underwood (D)	Huntington
	Burnie R. Crabtree (D)	Genoa
Thirteenth	Walter Rollins (D)	Kenova
	Gerald L. Chafin (D)	Delbarton
Fourteenth	Irvine "K.O." Damron (D)	Lenore
	Ernest C. Moore (D)	Thorpe
	T. J. Scott (D)	Welch
Fifteenth	Lacy Wright, Jr. (D)	Bradshaw
	Charles E. Allen (D)	Mullens
	Dan Burleson (D)	Mullens
	Thomas G. Goodwin (D)	Seth
Sixteenth	Sammy D. Dalton (D)	Harts
	Charles Gilliam (D)	Logan
	Thomas W. Mathis (D)	Logan
	Earl Ray Tomblin (D)	Chapmanville
Seventeenth	John Boettner, Jr. (D)	Charleston
	Jack Canfield (D)	Charleston
	Leon T. Copeland (D)	Charleston
	Phyllis E. Given (D)	Charleston
	Darrell E. Holmes (D)	Charleston
	E. M. Johnson (D)	Charleston
	J. Kemp McLaughlin (D)	Charleston
	John F. Payne (D)	Cleenden
	Lyle Sattes (D)	Charleston

HOUSE OF DELEGATES

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District	Name	Address
	Walton Shepherd (D)	Slasonville
	Larry Sonis (D)	Charleston
	Roger W. Tompkins (D)	Charleston
	Martha G. Wehrle (D)	Charleston
Eighteenth	Sterling T. Lewis (D)	Shady Spring
	Lewis N. McManus (D)	Beckley
	Ted T. Stacy (D)	Beckley
	Mrs. W. W. Withrow (D)	Beckley
Nineteenth	C. C. Christian, Jr. (D)	Princeton
	Charles E. Lohr (D)	Princeton
	James W. McNeely (D)	Bluefield
	W. Marion Shiflet (D)	Union
	Hawey A. Wells, Jr. (D)	Princeton
Twentieth	Joseph R. Holliday (D)	Lewisburg
	Sarah Lee Neal (D)	Rainelle
Twenty-first	Tom M. Bell (D)	Oak Hill
	Carroll E. Bumgarner (D)	Oak Hill
	Adam Toney (D)	Oak Hill
Twenty-second	A. L. Sommerville, Jr. (D)	Webster Springs
	Larry A. Tucker (D)	Summersville
Twenty-third	Billy B. Burke (D)	Glenville
	Harold V. Long (D)	Little Birch
Twenty-fourth	George E. Arnold (D)	Weston
Twenty-fifth	Gino R. Colombo (D)	Nutter Fort
	Donald L. Kopp (D)	Clarksburg
	John F. McCuskey (R)	Bridgeport
	C. Paul Wanstreet (D)	Clarksburg
Twenty-sixth	Romeo D. Erdie (D)	Fairmont
	Nick Fantasia (D)	Kingmont
	Samuel A. Morasco (D)	Grafton
	William E. Shingleton (D)	Fairmont
Twenty-seventh	Ralph Brown (D)	Arthurdale
	Robert W. Dinsmore (D)	Morgantown
	Clyde W. Hagedorn (D)	Morgantown
	Terry T. Jones (R)	Morgantown
Twenty-eighth	James W. Teets (R)	Terra Alta
Twenty-ninth	E. E. Bryan (D)	Phillippi
	Charles R. Shaffer (R)	Buckhannon
Thirtieth	Julia Pitsenberger (D)	Elkins
	Jae Spears (D)	Elkins
Thirty-first	Clyde M. See, Jr. (D)	Moorefield
Thirty-second	Guy Ross Smith (D)	Davis
Thirty-third	Robert D. Harman (R)	Keyser
Thirty-fourth	William T. Milleson (D)	Springfield
Thirty-fifth	Joseph E. Caudle (D)	Martinsburg
	Allen E. Goldstrom (R)	Berkeley Springs
	Luke E. Terry (R)	Martinsburg
Thirty-sixth	James M. Moler (D)	Charles Town
(D) Democrats		86
(R) Republicans		14
Total		100

STANDING COMMITTEES OF THE SENATE

1976

AGRICULTURE

Oates (Chairman), Beall (Vice Chairman), Benson, Darby, Hamilton, Hellems, Steptoe, Susman, Williams, Jones and Rogerson.

BANKING AND INSURANCE

Neeley (Chairman), Williams (Vice Chairman), Hamilton, Hatfield, Huffman, Moreland, Oates, Rogers, Susman, Ward, Deem, Herndon and Kusic.

CONFIRMATIONS

Benson (Chairman), Galperin (Vice Chairman), Darby, Davis, Hamilton, Hellems, McGraw, Rogers, Savilla, Willis, Gilligan, Harman and Herndon.

EDUCATION

Nelson (Chairman), Willis (Vice Chairman), Beall, Benson, Galperin, Hellems, McGraw, Oates, Savilla, Sharpe, Steptoe, Deem, Gilligan, Herndon, and Jones.

ELECTIONS

Williams (Chairman), McGraw (Vice Chairman), Galperin, Hamilton, Huffman, Moreland, Nelson, Palumbo, Steptoe, Deem and Jones.

FINANCE

Fanning (Chairman), Susman (Vice Chairman), Beall, Darby, Gainer, Galperin, Hatfield, McGraw, Neeley, Savilla, Sharpe, Steptoe, Williams, Willis, Gilligan, Harman, Hinkle and Rogerson.

HEALTH

Darby (Chairman), Hatfield (Vice Chairman), Davis, Galperin, Hamilton, Moreland, Sharpe, Harman and Jones.

INTERSTATE COOPERATION

Gainer (Chairman), Moreland (Vice Chairman), Neeley, Nelson, Susman, Gilligan and Herndon.

JUDICIARY

Palumbo (Chairman), Oates (Vice Chairman), Benson, Davis, Gainer, Hamilton, Hellems, Huffman, Moreland, Neeley, Nelson, Rogers, Steptoe, Ward, Deem, Herndon, Jones and Kusic.

LABOR

Hatfield (Chairman), Davis (Vice Chairman), Darby, Huffman, Sharpe, Steptoe, Ward, Harman and Kusic.

LOCAL GOVERNMENT

Galperin (Chairman), Huffman (Vice Chairman), Beall, Benson, Hellems, Moreland, Steptoe, Herndon and Hinkle.

SENATE COMMITTEES

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MILITARY

Moreland (Chairman), Savilla (Vice Chairman), Darby, Hatfield, McGraw, Neeley, Williams, Harman and Hinkle.

MINES AND MINING

Susman (Chairman), Fanning (Vice Chairman), Beall, Benson, Gainer, Hamilton, Williams, Willis, Deem and Kusic.

NATURAL RESOURCES

Gainer (Chairman), Benson (Vice Chairman), Beall, Galperin, Hellems, McGraw, Neeley, Oates, Palumbo, Rogers, Susman, Willis, Herndon, Kusic and Rogerson.

PUBLIC INSTITUTIONS

Sharpe (Chairman), Hatfield (Vice Chairman), Darby, Davis, Nelson, Rogers, Savilla, Steptoe, Gilligan, Harman and Hinkle.

RULES

Brotherton (ex officio Chairman), Fanning, Gainer, Nelson, Palumbo, Sharpe, Susman, Ward, Kusic and Rogerson.

TRANSPORTATION

Willis (Chairman), Hamilton (Vice Chairman), Beall, Davis, Gainer, Hatfield, Huffman, Neeley, Nelson, Palumbo, Savilla, Sharpe, Williams, Deem, Hinkle, Gilligan and Rogerson.

JOINT COMMITTEES

ENROLLED BILLS

Davis (Chairman), Beall, Rogers, Hinkle and Jones.

GOVERNMENT AND FINANCE

Brotherton (ex officio Chairman), Fanning, Palumbo, Sharpe, Ward, Deem and Rogerson.

JOINT RULES

Brotherton (ex officio Chairman), Ward and Rogerson.

SPECIAL COMMITTEE

FUNDED HEALTH PROGRAM— CITIZENS CONFERENCE ON STATE LEGISLATURES

Darby (Chairman), Davis, Hatfield, Jones and Sharpe.

PURCHASING PRACTICES AND PROCEDURES COMMISSION

Brotherton (Chairman), McGraw, Nelson, Gilligan and Harman.

**STANDING COMMITTEES OF THE
HOUSE OF DELEGATES
1976**

AGRICULTURE AND NATURAL RESOURCES

Ballouz (Chairman), Neal (Vice Chairman), Arnold, Artrip, Brenda, Brown, Bryan, Burleson, Chafin, Childers, Damron (13th Dist.), Erdie, Goodwin, Holliday, McLaughlin, Miller, Milleson, See, Smith, Wells, Wiedebusch, Worden, McCuskey, Swann and Terry.

BANKING AND INSURANCE

Moler (Chairman of Banking), Morasco (Chairman of Insurance), Allen (Vice Chairman of Banking), Stacy (Vice Chairman of Insurance), Canfield, Crabtree, Farley, Holmes, Johnson, Milleson, Mowery, Peak, Pitsenberger, Scott, See, Shingleton, Tomblin, Tompkins, Toney, Tonkovich, Tucker, Wright, Goldstrom, Jones and Otte.

CONSTITUTIONAL REVISION

Copeland (Chairman), Bumgarner (Vice Chairman), Albright, Artrip, Bell, Colombo, Dalton, Dinsmore, Donley, Farley, McLaughlin, Mowery, Peak, Prestera, Sattes, Shuman, Sonis, Spears, Underwood, Wells, Wright, Goldstrom, McCuskey, Moats and Terry.

EDUCATION

Lohr (Chairman), Wehrle (Vice Chairman), Ballouz, Bird, Brown, Burleson, Dalton, Damron (10th Dist.) Donley, Erdie, Goodwin, Hagedorn, Lewis, McNeely, Payne, Sonis, Spears, Underwood, Wiedebusch, Worden, Wright, Esposito, Harman, Shaffer and Swann.

FINANCE

Burke (Chairman), Fantasia (Vice Chairman), Allen, Bell, Boetner, Brenda, Bryan, Crabtree, Farley, Fitzgerald, Given, Johnson, Kincaid, Long, Mathis, Moler, Morasco, Neal, Peak, Polan, Wanstreet, Withrow, Altmeyer, Jones and Teets.

HEALTH AND WELFARE

Withrow (Chairman), Tonkovich (Vice Chairman), Arnold, Artrip, Bird, Bumgarner, Caudle, Chafin, Childers, Colombo, Fitzgerald, Gvoyich, Hagedorn, Holliday, Lewis, Miller, Smith, Spears, Tomblin, Wehrle, Wells, Worden, Esposito, Otte and Shaffer.

INDUSTRY AND LABOR

Kopp (Chairman), Moore (Vice Chairman), Allen, Artrip, Bumgarner, Burleson, Copeland, Damron (10th Dist.), Damron (13th Dist.), Fantasia, Gilliam, Given, Gvoyich, Hagedorn, Holmes, McLaughlin, Morasco, Polan, Rollins, Sonis, Tompkins, Wiedebusch, Altmeyer, Harman and Shaffer.

INTERSTATE COOPERATION

Kopp (Chairman), Christian, Given, Rollins, Withrow, Harman and Terry. (The Speaker is a nonvoting member.)

JUDICIARY

Sommerville (Chairman), See (Vice Chairman), Albright, Caudle, Christian, Colombo, Copeland, Dinsmore, Gilliam, Kopp, Moore, Pitsenberger, Prestera, Sattes, Scott, Shepherd, Shingleton, Shuman, Stacy, Tompkins, Tucker, McCuskey, Moats, Moyle and Terry.

POLITICAL SUBDIVISIONS

Given (Chairman), Wanstreet (Vice Chairman), Albright, Bell, Brown, Canfield, Chafin, Damron (13th Dist.), Dinsmore, Gvoyich, Kincaid, Lewis, Mathis, McLaughlin, McNeely, Mowery, Shepherd, Shuman, Sonis, Toney, Tonkovich, Wells, Esposito, Moyle and Otte.

ROADS AND TRANSPORTATION

Donley (Chairman), Mowery (Vice Chairman), Arnold, Boettner, Bumgarner, Childers, Christian, Damron (13th Dist.), Erdie, Fitzgerald, Holliday, Long, Milleson, Payne, Prestera, Sattes, Smith, Tomblin, Toney, Underwood, Wanstreet, Wehrle, Jones, Moats and Swann.

RULES

McManus (ex officio Chairman), Brenda, Burke, Fantasia, Goodwin, Kopp, Lohr, Moler, Rollins, Shiflet, Sommerville and Seibert.

STATE AND FEDERAL AFFAIRS

Scott (Chairman), Payne (Vice Chairman), Bird, Bryan, Canfield, Caudle, Childers, Crabtree, Dalton, Damron (10th Dist.), Gilliam, Holmes, Johnson, Kincaid, Long, McNeely, Miller, Neal, Shepherd, Smith, Tomblin, Goldstrom, Harman, Moyle and Teets.

JOINT COMMITTEES**ENROLLED BILLS**

Christian (Chairman), Holmes, Spears, Goldstrom and Swann.

GOVERNMENT AND FINANCE

McManus (ex officio Chairman), Burke, Lohr, Shiflet, Somerville, Seibert and Teets.

JOINT RULES

McManus (ex officio Chairman), Shiflet and Seibert.

SELECT COMMITTEE ON REDISTRICTING

Dinsmore (Chairman), Peak (Vice Chairman), Albright, Ballouz, Boettner, Brenda, Canfield, Chafin, Holmes, Lohr, Mathis, Moler, Moore, Pitsenberger, Polan, Rollins, See, Shingleton, Stacy, Toney, Tonkovich, Tucker, Altmeyer, Moats and Teets.

SPECIAL COMMITTEES

Majority Caucus

Shiflet (Chairman), Canfield and Chafin (Associate Chairmen).

**FUNDED HEALTH PROGRAM—
CITIZENS CONFERENCE ON STATE LEGISLATURES**

Withrow (Chairman), Artrip, Esposito, Wehrle and Wells.

**PURCHASING PRACTICES AND PROCEDURES
COMMISSION**

McManus (Chairman), Polan, Shingleton, Moats and Seibert.

MINORITY ORGANIZATION

Minority Leader—George H. Seibert, Jr.

Caucus Chairman—Harry E. Moats

Minority Whip—Terry T. Jones

Minority chairmen on Standing Committees:

Agriculture and Natural Resources—Larry D. Swann

Education—Robert D. Harman

Finance—James W. Teets

Health and Welfare—Charles R. Shaffer

Judiciary—Harry E. Moats

Political Subdivisions—Luke E. Terry

LEGISLATURE OF WEST VIRGINIA

ACTS

REGULAR SESSION, 1976

CHAPTER 1

(S. B. 128—By Mr. Ward and Mr. Rogers)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to actions for wrongful death and damages recoverable for wrongful death; distribution of damages; and period of limitation.

Be it enacted by the Legislature of West Virginia:

That section six, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

1 Every such action shall be brought by and in the name
2 of the personal representative of such deceased person
3 who has been duly appointed in this state, or in any other
4 state, territory, or district of the United States, or in any
5 foreign country, and the amount recovered in every such
6 action shall be recovered by said personal representative
7 and be distributed in accordance herewith. If the per-
8 sonal representative was duly appointed in another

9 state, territory, or district of the United States, or in any
10 foreign country, such personal representative shall, at the
11 time of filing of the complaint, post bond with a corporate
12 surety thereon authorized to do business in this state,
13 in the sum of one hundred dollars, conditioned that such
14 personal representative shall pay all costs adjudged
15 against him and that he shall comply with the provisions
16 of this section. The circuit court may increase or decrease
17 the amount of said bond, for good cause.

18 In any such action for wrongful death the jury may
19 award such damages as to it may seem fair and just, and
20 may direct in what proportion they shall be distributed
21 to the surviving spouse and children, including adopted
22 children and stepchildren, and grandchildren of the de-
23 ceased, or if there be none such, then to the parents,
24 brothers and sisters of the deceased, if there be none
25 such, only then to such person or persons who were de-
26 pendent upon the decedent for support.

27 The verdict of the jury shall include, but may not be
28 limited to damages for the following: (a) Sorrow, mental
29 anguish, and solace which may include society, com-
30 panionship, comfort, guidance, kindly offices and advice
31 of the decedent; (b) compensation for reasonably ex-
32 pected loss of (i) income of the decedent, and (ii) ser-
33 vices, protection, care and assistance provided by the
34 decedent; (c) expenses for the care, treatment and hos-
35 pitalization of the decedent incident to the injury
36 resulting in death; and (d) reasonable funeral expenses.

37 In its verdict the jury shall set forth separately the
38 amount of damages, if any, awarded by it for reasonable
39 funeral, hospital, medical and said other expenses in-
40 curred as a result of the wrongful act, neglect or default
41 of the defendant or defendants which resulted in death,
42 and any such amount recovered for such expenses shall
43 be so expended by the personal representative.

44 Every such action shall be commenced within two years
45 after the death of such deceased person. The provisions
46 of this section shall not apply to actions brought for the

47 death of any person occurring prior to July one, one
48 thousand nine hundred seventy-six.

CHAPTER 2

(H. B. 1573—By Mr. Albright)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-a, relating to actions for injuries; providing that a settlement or release of or statement with respect to a personal injury which is entered into, obtained or made within twenty days of such personal injury may be disavowed, in writing; relating to statement of disavowal and disposition of a copy thereof; and specifying circumstances under which such settlement, release or statement shall not be admissible in evidence.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eleven-a, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-11a. Settlement, release or statement within twenty days after personal injury; disavowal.

1 If a person sustains a personal injury, no person shall
2 within twenty days from the date of such personal injury
3 while the injured person is either (a) an inpatient in any
4 hospital or (b) partially or totally unable to engage in his
5 or her usual trade, profession or occupation:

6 (1) Negotiate or attempt to negotiate a settlement of
7 any claim for such personal injury with or for and on behalf
8 of such injured person;

9 (2) Obtain or attempt to obtain from such injured per-
10 son a partial or general release of liability for such injury; or

11 (3) Obtain or attempt to obtain any statement, either
12 written or oral, from the injured person for use in negotiating
13 a settlement or obtaining a partial or general release of
14 liability with respect to such personal injury: *Provided*, That
15 nothing herein shall prohibit a person acting or intending
16 to act for and on behalf of such injured person from obtaining
17 any statement, oral or written, from an injured person upon
18 the express request of the injured person.

19 Nothing herein shall prevent a person who may be liable
20 for damages on account of such personal injury from making
21 an advance payment of all or any part of his liability for
22 such damages; any sum paid during such twenty days by a
23 person liable for damages on account of such personal injury
24 shall be allowed as full credit against any damages which
25 may be finally determined to be due an injured person.

26 Any settlement, release of liability or statement entered
27 into, obtained or made in violation of this section may
28 be disavowed by the injured person at any time within one
29 hundred eighty days from the date of the personal injury by exe-
30 cuting a written statement of disavowal and thereupon for-
31 warding a copy of the same to the person violating this section,
32 in which event such settlement, release or statement shall not be
33 admissible in evidence for any purpose in any court or other
34 proceeding relating to such personal injury, if any consideration
35 paid for the settlement of or the general release of liability for
36 such personal injury, at the time of the forwarding of the copy
37 of such written statement of disavowal, is repaid or returned
38 to the person who paid such consideration.

CHAPTER 3

(S. B. 452—By Mr. Neeley, Mr. Davis and Mr. Sharpe)

[Passed March 9, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fourteen,
chapter twenty-nine of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to state commission on aging; use of funds, including state revenue sharing funds, for construction, acquisition and renovation of senior centers.

Be it enacted by the Legislature of West Virginia:

That section nine, article fourteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 14. STATE COMMISSION ON AGING.

§29-14-9. Programs of services for the aging.

1 The commission may establish, under the administration
2 of the director, in selected areas and local communities of
3 the state, programs of services for the aging. Particular
4 emphasis shall be given to services designed to foster
5 continued participation of older people in family and
6 community life and to prevent, insofar as possible, the
7 onset of dependency and the need for long-term institu-
8 tional care. Any allocations by the commission of appro-
9 priations for such programs may be made contingent upon
10 local appropriations or gifts in money or in kind for the
11 support of such programs. The county commission of any
12 county or governing body of any municipality in this
13 state may appropriate and expend money for establishing
14 and maintaining such programs. Funds so appropriated by
15 the county commission or by the governing body of any
16 municipality in this state may be contributed from time to
17 time to any committee or organization approved by the
18 commission on aging for the purposes authorized by this
19 section.

20 The commission on aging as provided hereunder may
21 receive and expend appropriate funding, including the
22 state's share of federal revenue sharing funds, for the
23 construction, acquisition and renovation of senior centers.

24 From time to time the Legislature may appropriate
25 funds on a matching basis for funds from any other
26 source to be used for the purposes stated above.

CHAPTER 4

(S. B. 143—By Mr. Benson, Mr. Beall and Mr. Gilligan)

[Passed February 6, 1976; in effect from passage.

Disapproved by the Governor, and repassed notwithstanding his objections.]

AN ACT to amend and reenact section two, article two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter nineteen of said code by adding thereto a new article, designated article twelve-a, all relating to abolishing certain special revenue farm accounts in the state treasury; the creation of a farm management commission; providing a legislative purpose; establishing certain definitions; designating the chairman of the commission; quorum and requiring meetings of the commission; providing for the transfer of certain institutional farms to the commission; providing for the uninterrupted operation of the farms; prescribing powers, duties and responsibilities of the commission; providing for the appointment of a farm management director; qualification of the director; listing the powers and duties of the director; establishing the priority of distribution of farm products; providing a procedure for establishing the division lines between farms and institutions; providing for appeals to the commission; providing a remedy; employment of persons affected by the transfer of institutional farms; and establishing a penalty for violations.

Be it enacted by the Legislature of West Virginia:

That section two, article two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter nineteen of said code be amended by adding thereto a new article, designated article twelve-a, all to read as follows:

Chapter

12. Public Moneys and Securities.

19. Agriculture.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.****§12-2-2. Itemized record of moneys received for deposit; credit to state fund; exceptions.**

1 All officials and employees of the state authorized by
2 statute to accept moneys due the state of West Virginia
3 shall keep a daily itemized record of such moneys so re-
4 ceived for deposit in the state treasury and shall deposit
5 promptly with the state treasurer all moneys received or
6 collected by them for or on behalf of the state for any
7 purpose whatsoever. When so paid, such moneys shall be
8 credited to the state fund and treated by the auditor and
9 treasurer as part of the general revenue of the state, and
10 shall not be used for any purpose whatsoever unless and
11 until authorized and directed by the Legislature, except
12 the following funds:

13 (a) All moneys received out of appropriations made
14 by the Congress of the United States;

15 (b) All funds derived from the sale of farm and
16 dairy products from farms operated by any agency of
17 state government other than the farm management com-
18 mission;

19 (c) All endowment funds, bequests, donations, execu-
20 tive emergency funds, and death and disability funds;

21 (d) All fees and funds collected at state educational
22 institutions for student activities;

23 (e) All funds derived from collections from dormi-
24 tories, boardinghouses, cafeterias and road camps;

25 (f) All moneys received from counties by institutions
26 for the deaf and blind on account of clothing for indi-
27 gent pupils;

28 (g) All insurance collected on account of losses by
29 fire and refunds;

30 (h) All funds derived from bookstores and sales of
31 blank paper and stationery, and collections by the chief
32 inspector of public offices;

33 (i) All moneys collected and belonging to the capitol
34 building fund, state road fund, state road sinking funds,
35 general school fund, school fund, state fund (moneys
36 belonging to counties, districts and municipalities), state
37 interest and sinking fund, state compensation funds, the
38 fund maintained by the public service commission for the
39 investigation and supervision of applications and licenses
40 under article nine, chapter thirty-one of this code, and all
41 funds and moneys payable to or received by the natural
42 resources commission of West Virginia;

43 (j) All moneys collected or received under any act of
44 the Legislature providing that funds collected or received
45 thereunder shall be used for specific purposes.

46 All moneys, excepted as aforesaid, shall be paid into
47 the state treasury in the same manner as collections not so
48 excepted, and shall be carried in separate accounts to be
49 used and expended only for the purposes for which the
50 same are authorized to be collected by law. The gross
51 amount collected in all cases shall be paid into the state
52 treasury, and commissions, costs and expenses of collec-
53 tion authorized by general law to be paid out of the gross
54 collection are hereby authorized to be paid out of the
55 moneys collected and paid into the state treasury in the
56 same manner as other payments are made from the state
57 treasury.

58 The official or employee making such deposits in the
59 state treasury shall prepare such deposit lists in triplicate
60 in such manner and upon such report forms as may be
61 prescribed by the commissioner of finance and adminis-
62 tration. The original of this report shall accompany the
63 deposit to the treasurer's office. Certified or receipted
64 copies shall be immediately forwarded by the official or
65 employee making such deposit to the state auditor and
66 to the commissioner of finance and administration, and a
67 copy shall be kept by the official or employee making the
68 report and shall become a part of his permanent record.

CHAPTER 19. AGRICULTURE.

ARTICLE 12A. FARM MANAGEMENT COMMISSION.

§19-12A-1. Legislative findings and declarations.

§19-12A-2. Definitions.

- §19-12A-3. Farm management commission created; composition; chairman; quorum; meetings; vacancies.
- §19-12A-4. Transfer of institutional farms, farm equipment, farm facilities, inventories and agricultural products to commission; utility continuance; provisions for uninterrupted operation; transfer of funds.
- §19-12A-5. Powers, duties and responsibilities of commission.
- §19-12A-6. Appointment of farm management director; qualifications; powers and duties.
- §19-12A-7. Farm division lines to be established; appeal to commission; remedy.
- §19-12A-8. Effect of farm transfer on employees; disposition.
- §19-12A-9. Penalty.

§19-12A-1. Legislative findings and declarations.

1 The Legislature hereby finds and declares that in order
2 to ensure economic and efficient land use, increase and
3 improve agricultural production and provide food for
4 residents of state operated institutions, state-owned farms
5 should be transferred to the state farm management
6 commission as is provided by this article. The Legislature
7 also finds and declares that the operation of all institu-
8 tional farms under one management system with a single
9 integrated farm plan is the most efficient method of
10 providing the food needs of residents of state operated
11 institutions and will promote the health and welfare of all
12 citizens of this state.

§19-12A-2. Definitions.

- 1 For the purpose of this article:
- 2 "Agricultural products" means livestock and livestock
3 products, poultry and poultry products, fruits and fruit
4 products, vegetables and vegetable products, grains and
5 hays and the products derived therefrom, tobacco, syrups,
6 honey, and other products derived from the business of
7 farming; including such other products as may be manu-
8 factured, derived, or prepared from agricultural products,
9 raw or processed, which are used as food for man or
10 animals.
- 11 "Commission" means the farm management commis-
12 sion as established by this article.

13 "Farm equipment" means any equipment used for
14 agricultural production, owned by an institution and
15 transferred to the commission as provided in this article.

16 "Farm facility" means any processing plant, milking
17 parlor, farm equipment storage building, barn, silo, grain
18 storage building, swinery or any other building owned by
19 an institution, used in its farming operations and trans-
20 ferred to the commission as provided in this article.

21 "Institution" means any facility operated by the de-
22 partment of mental health or the state commissioner of
23 public institutions for care, treatment, confinement or
24 rehabilitation of residents.

25 "Institutional farm" means any land owned by the
26 department of mental health or the state commissioner of
27 public institutions which was formerly operated as a farm,
28 is now being operated as a farm or could be converted to
29 agricultural production, and is transferred to the com-
30 mission as provided in this article.

**§19-12A-3. Farm management commission created; composi-
tion; chairman; quorum; meetings; vacancies.**

1 There is hereby created within state government a farm
2 management commission composed of three members who
3 are the commissioner of agriculture, who shall be chair-
4 man, the commissioner of finance and administration and
5 the dean of the West Virginia University college of
6 agriculture and forestry. No business may be transacted
7 by the commission in the absence of a quorum which
8 consists of two members including the chairman. The farm
9 management commission shall hold meetings at least once
10 every two months, and on call of the chairman.

11 If a vacancy occurs on the commission, the farm manage-
12 ment director, as provided in this article, shall act as a
13 member of the commission until the vacancy is filled.

14 If a vacancy occurs in the office of the commissioner
15 of agriculture, the members of the commission and the
16 farm management director shall select, from among them,
17 a chairman to serve until a commissioner of agriculture
18 is appointed or elected and qualified.

§19-12A-4. Transfer of institutional farms, farm equipment, farm facilities, inventories and agricultural products to commission; utility continuance; provisions for uninterrupted operation; transfer of funds.

1 (a) On the first day of July, one thousand nine hun-
2 dred seventy-six, the department of mental health shall
3 transfer all institutional farms and all easements, min-
4 eral rights, appurtenances, farm equipment, agricultural
5 products, inventories and farm facilities thereon, or at-
6 tached thereto, to the commission as set forth below:

7 (1) The Colin Anderson institutional farm, located at
8 St. Marys, Pleasants County, which shall include not
9 less than six hundred fifty acres;

10 (2) The Huntington state hospital institutional farm,
11 located at Barboursville, Cabell County, which shall in-
12 clude not less than six hundred ninety-seven acres;

13 (3) The Lakin state hospital institutional farm, lo-
14 cated at Lakin, Mason County, which shall include not
15 less than nine hundred fifty acres;

16 (4) The Spencer state hospital institutional farm,
17 located at Spencer, Roane County, which shall include
18 not less than one hundred nine acres;

19 (5) The Weston state hospital institutional farm, lo-
20 cated at Weston, Lewis County, which shall include not
21 less than five hundred seventy acres; and

22 (6) The Roney's Point branch hospital institutional
23 farm located at Triadelphia, Ohio County, which shall
24 include not less than one hundred thirty acres.

25 (b) On the first day of July, one thousand nine hun-
26 dred seventy-six, the state commissioner of public insti-
27 tutions shall transfer all institutional farms and all ease-
28 ments, mineral rights, appurtenances, farm equipment,
29 agricultural products, inventories and farm facilities
30 thereon or attached thereto to the commission as set
31 forth below:

32 (1) The Huttonsville correctional center institutional
33 farm, located at Huttonsville, Randolph County, which

34 shall include not less than five thousand two hundred
35 acres, including all of the tract of land commonly known
36 as Becky's Creek farm;

37 (2) The Hopemont state hospital institutional farm,
38 located at Terra Alta, Preston County, which shall in-
39 clude not less than five hundred acres;

40 (3) The West Virginia industrial school for boys in-
41 stitutional farm, located at Pruntytown, Taylor County,
42 which shall include not less than one thousand five hun-
43 dred eighty-seven acres;

44 (4) The West Virginia prison for women institutional
45 farm, located at Pence Springs, Summers County, which
46 shall include not less than one hundred eighty acres;

47 (5) The Pinecrest state hospital institutional farm,
48 located at Beckley, Raleigh County, which shall include
49 not less than two hundred twenty acres;

50 (6) The West Virginia penitentiary institutional farm,
51 located at Moundsville, Marshall County, which shall
52 contain not less than one hundred forty-one acres;

53 (7) The Denmar state hospital institutional farm,
54 located at Beard, Pocahontas County, which shall include
55 not less than one hundred twelve acres;

56 (8) The Andrew S. Rowan memorial home institu-
57 tional farm, located at Sweet Springs, Monroe County,
58 which shall include not less than six hundred fifty
59 acres;

60 (9) The West Virginia children's home institutional
61 farm, located at Elkins, Randolph County, which shall
62 include not less than one hundred fifty acres; and

63 (10) The West Virginia industrial home for girls in-
64 stitutional farm, located at Industrial, Harrison County,
65 which shall include not less than twenty acres.

66 (c) In the event a water supply system, a sewage
67 disposal system or any other utility or service facility
68 involved in the operation of an institution is hereby
69 transferred to the commission, an easement is hereby

70 granted to the institution affected to enable the institu-
71 tion to continue, uninterrupted, the water supply system,
72 the sewage disposal system or the utility or service facility
73 so transferred.

74 If an institutional farm is dependent upon a water
75 supply system, a sewage disposal system or any other
76 utility or service facility located on the property of an
77 institution, an easement is hereby granted to the com-
78 mission to enable the commission to continue, uninter-
79 rupted, the water supply system, the sewage disposal
80 system or the utility or service facility involved.

81 In all cases where an institution and a farm under the
82 control of the commission are jointly dependent on the
83 same water supply system, sewage disposal system, util-
84 ity or service facility, the cost shall be prorated on the
85 basis of the amount used by the institution and the in-
86 stitutional farm.

87 (d) In order to provide for the uninterrupted oper-
88 ation of institutional farms, the commission shall, before
89 the twenty-fifth day of June, one thousand nine hundred
90 seventy-six, meet and establish a farm management plan.
91 Before the twenty-fifth day of June, one thousand nine
92 hundred seventy-six, the commission shall employ a farm
93 management director and establish an employee system.
94 The commission and the farm management director shall
95 meet and confer with the commissioner of public institu-
96 tions and the director of the department of mental health
97 prior to the first day of July, one thousand nine hundred
98 seventy-six, to facilitate the orderly transfer of the insti-
99 tutional farms. The state commissioner of public institu-
100 tions and the director of the department of mental health
101 shall cooperate fully with the commission to ensure that
102 farming operations are not discontinued prior to their
103 transfer to the commission.

104 (e) After the thirtieth day of June but no later than
105 the fifteenth day of July, one thousand nine hundred
106 seventy-six, all funds remaining in all institutional farms'
107 special revenue accounts shall be transferred to the gen-
108 eral revenue account of the state and all institutional
109 farms' special revenue accounts shall be abolished.

§19-12A-5. Powers, duties and responsibilities of commission.

1 The purpose of the commission is to manage institu-
2 tional farms for the most efficient production of food
3 products for residents of state institutions. The commis-
4 sion has full power and authority over the institutional
5 farms, farm management, farm employees and farm pro-
6 duction. It is the responsibility of the commission to
7 implement the intent of the Legislature. The commission
8 shall confer with the West Virginia University college of
9 agriculture and forestry in implementing and adjusting its
10 farm management plan. The commission may promulgate
11 rules and regulations relating to farm management. When
12 and if requested by the commissioner of public institu-
13 tions, the farm management commission may use inmates
14 from adult correctional institutions for farm labor. The
15 commissioner of public institutions shall be responsible
16 for the selection, direction and supervision of the inmates
17 and the farm management director shall assign the work
18 to be performed by inmates.

**§19-12A-6. Appointment of farm management director; quali-
fications; powers and duties.**

1 The commission shall appoint a farm management di-
2 rector who, in addition to qualifications established by the
3 commission, shall have owned, operated or managed a
4 farm for at least five years within ten years immediately
5 prior to his appointment. The farm management director
6 is the chief executive officer of the commission and is
7 responsible for conducting the operations of the farms.
8 He shall prepare an annual report of the farming opera-
9 tions, including a listing of all receipts and expenditures
10 and shall present it to the commission and the Legislature
11 at the end of each fiscal year.

12 As authorized or directed by the commission, he shall
13 also:

14 (1) Prepare the annual budget request for the opera-
15 tion of the institutional farms and submit it to the com-
16 mission for approval and submission to the commissioner
17 of finance and administration.

18 (2) Receive and approve all requisitions for farm
19 supplies and equipment.

20 (3) Supervise the operation of all canneries and de-
21 termine what foods are to be canned.

22 (4) Recruit and approve assistant farm managers to
23 supervise each institutional farm.

24 (5) Implement all orders of the commission.

25 (6) Supervise all other employees of the commission.

26 (7) Transfer farm supplies, farm equipment, farm
27 facilities, food stuffs and produce from one institutional
28 farm to another to promote efficiency and improve farm
29 management.

30 With the approval of the commission, the farm man-
31 agement director may rent or lease additional land for
32 farm use.

33 From the total amount of food, milk and other com-
34 modities produced on institutional farms, the farm man-
35 agement director shall provide each of the institutions
36 under the control of the department of mental health and
37 the state commissioner of public institutions, at no cost,
38 a proportionate amount of these products based on the
39 population and dietary needs of each institution and each
40 of these institutions shall use the food, milk and com-
41 modities provided by the farm management director for
42 their annual food requirements. By the thirtieth day of
43 September each year, each institution shall present to the
44 farm management director a requisition request for the
45 food, milk and other commodities the institution will need
46 during the next fiscal year.

47 If, during the year, an institution finds that it needs
48 other or additional food, milk or commodities not included
49 in the requisition request for the year, the institutional
50 superintendent shall forward a supplemental request for
51 the additional or other food, milk or commodities to the
52 farm management director at least thirty days before the
53 farm management director is to deliver such other or
54 additional food, milk or commodities to the institution. An
55 institution may purchase food, milk or commodities from
56 other sources if the farm management director certifies

57 in writing that he will be unable to supply the needed
58 food, milk or commodities at the time such food, milk or
59 commodities will be needed by the institution. If institu-
60 tional farms produce more food, milk and other com-
61 modities than can be consumed by the institutions, the
62 farm management director first shall sell this surplus to
63 other state agencies which request it at the wholesale fair
64 market price for the products. If any surplus remains
65 after sales to other state agencies, he may sell the surplus
66 on the open market. All revenues derived from the sale
67 of any farm product shall be deposited by the farm
68 management director in the general revenue fund of the
69 state.

**§19-12A-7. Farm division lines to be established; appeal to
commission; remedy.**

1 The farm management director shall, immediately after
2 being appointed, employ a surveyor to establish the
3 division line between the farms being transferred to the
4 commission and the property remaining under the control
5 and authority of the department of mental health and the
6 state commissioner of public institutions. In establishing
7 the division line, the director of the department of mental
8 health, the state commissioner of public institutions and
9 the farm management director shall cooperate fully to
10 ensure that property, essential to institutions, is not trans-
11 ferred to the commission. In the event of a disagreement
12 over the placement of a division line, the disposition of
13 farm equipment or the disposition of farm facilities, the
14 farm management director and all agencies involved
15 shall, within sixty days, appear before the commission for
16 a hearing on the matter. The commission shall decide the
17 matter to the best interest of the agencies involved,
18 including the best interest of the residents of any insti-
19 tution affected. Any person or agency aggrieved by the
20 decision of the commission may appeal the decision to the
21 circuit court in the county in which the institution is
22 located. After the division lines have been finally estab-
23 lished, all property transferred to the commission shall
24 be deeded by the department of mental health and the
25 commissioner of public institutions to the commission

26 unless reversionary interests prevent such deed transfer
27 in which case the land shall be assigned or leased, for
28 nominal charge, to the commission.

§19-12A-8. Effect of farm transfer on employees; disposition.

1 Farm employees of the department of mental health
2 and the state commissioner of public institutions, who are
3 affected by the provisions of this article, may apply for
4 employment with the institution in another job classi-
5 fication or they may apply for employment with the
6 commission if they meet the qualifications established by
7 the commission for its employees.

§19-12A-9. Penalty.

1 Any person who violates any of the provisions of this
2 article shall be guilty of a misdemeanor, and, upon con-
3 viction thereof, shall be fined not less than five hundred
4 nor more than one thousand dollars.

CHAPTER 5

(H. B. 1279—By Mr. Moler and Mr. Milleson)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-d, relating to the suppression and control of noxious weeds; title; declaration of purpose; legislative findings; definitions; administration of article; promulgation of regulations; surveys for noxious weeds; quarantines; prohibited acts; permits; authority to stop sale or delivery; cooperation; right of entry; legal recourse; violations and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twelve-d, to read as follows:

ARTICLE 12D. WEST VIRGINIA NOXIOUS WEED ACT.

- §19-12D-1. Title.
- §19-12D-2. Declaration of purpose; legislative findings.
- §19-12D-3. Definitions.
- §19-12A-4. Administration of article; promulgation of regulations.
- §19-12D-5. Surveys for noxious weeds; multiflora rose.
- §19-12D-6. Quarantines.
- §19-12D-7. Prohibited acts; permits; authority to stop sale or delivery.
- §19-12D-8. Cooperation with federal and state agencies; drug producing plants declared noxious.
- §19-12D-9. Right of entry.
- §19-12D-10. Review of actions of commissioner.
- §19-12D-11. Penalties.

§19-12D-1. Title.

- 1 This article shall be known by the short title of "The West
- 2 Virginia Noxious Weed Act of 1976."

§19-12D-2. Declaration of purpose; legislative findings.

- 1 The purpose of this article is to provide for the suppression
- 2 or control of noxious weeds which have proven to be or
- 3 which scientific evidence indicates may become detrimental
- 4 factors affecting the public health or economy of the state.
- 5 The Legislature finds that certain plant species may spread to
- 6 the extent they become detrimental to agricultural crops, other
- 7 desirable plants, livestock, waterways, land, public health and/
- 8 or the general economy and that certain noxious weeds, not
- 9 yet known to occur in West Virginia, may be inadvertently
- 10 introduced and that procedures for locating and eliminating
- 11 such infestations need to be established. Therefore, it is deemed
- 12 necessary, in the public interest, to provide authority for the
- 13 surveillance of, suppression and control of noxious weeds.

§19-12D-3. Definitions.

- 1 As used in this article:
- 2 (a) "Certificate" means a document issued by the commis-
- 3 sioner indicating a regulated article is free of noxious weeds.
- 4 (b) "Commissioner" means the commissioner of agricul-
- 5 ture of the state of West Virginia and his duly authorized rep-
- 6 resentatives.
- 7 (c) "Infested" means the establishment of a noxious weed

8 or exposure to such weed in a way creating reasonable cer-
9 tainty that establishment will occur.

10 (d) "Move" means to ship, offer for shipment, receive for
11 transportation, carry, or otherwise transport, move or allow to
12 be moved.

13 (e) "Noxious weed" means any living plant, or part there-
14 of, declared by the commissioner, after public hearing, to be
15 detrimental to crops, other desirable plants, waterways, live-
16 stock, land or other property, or to be injurious to public
17 health or the economy.

18 (f) "Permit" means a document issued by the commissioner
19 to provide for movement of regulated articles to restricted des-
20 tinations for limited handling, utilization, processing, or for
21 scientific purposes.

22 (g) "Person" means any individual or combination of in-
23 dividuals, partnership, corporation, company, society, asso-
24 ciation, firm, or other business entity and each officer, agent
25 or employee thereof; the state and federal government and
26 any department, agency, or subdivision thereof; or any other
27 entity.

28 (h) "Quarantine" means a legal declaration by the com-
29 missioner specifying:

30 (1) The common and scientific name of the noxious weed.

31 (2) The articles to be regulated.

32 (3) The conditions governing movement.

33 (4) Exemptions.

34 (i) "Regulated article" means any article of any character
35 which is transporting or which is capable of transporting any
36 noxious weed.

37 (j) "Reasonable notification" means at least forty-eight
38 hours.

§19-12D-4. Administration of article; promulgation of regulations.

1 (a) The commissioner shall administer and enforce the
2 provisions of this article and shall have authority to issue

3 regulations after a public hearing following due notice to
4 all interested persons in conformance with the provisions of
5 the state administrative procedures set forth in chapter
6 twenty-nine-a of this code.

7 (b) In issuing such regulations, the commissioner shall
8 give consideration to pertinent research findings and recom-
9 mendations of other agencies of the state, the federal govern-
10 ment, and other reliable sources.

§19-12D-5. Surveys for noxious weeds; multiflora rose.

1 (a) The commissioner shall make surveys for noxious
2 weeds and when it is determined that an infestation exists
3 within the state he may, by regulation after public hearing held
4 in accordance with procedures set forth in chapter twenty-
5 nine-a of this code, declare the weed to be noxious.

6 (b) Multiflora rose, *Rosa multiflora*, is a detriment to
7 agriculture in West Virginia and is hereby declared to be a
8 noxious weed.

§19-12D-6. Quarantines.

1 When a plant is declared to be noxious under section five
2 of this article, the commissioner shall, subsequent to the decla-
3 ration of a quarantine, limit the application of rules and regu-
4 lations pertinent to such quarantine to the infested portion of
5 the state and appropriate environs, which would be known as
6 the regulated area and may, without further hearing, extend
7 the regulated area to include additional portions of the state
8 upon publication of a notice to that effect in a newspaper dis-
9 tributed in the extended area or by direct written notice to
10 those concerned.

§19-12D-7. Prohibited acts; permits; authority to stop sale or delivery.

1 (a) No person shall violate any provision of this law or any
2 rule promulgated thereunder.

3 (b) No person shall move, transport, deliver, ship or offer
4 for shipment into or within this state any noxious weed with-
5 out first obtaining a permit from the commissioner and such
6 permit shall be issued only after it has been determined that

7 the noxious weed is generally present throughout the state or
8 is for scientific purposes subject to prescribed safeguards.

9 (c) The commissioner, in order to prevent the introduction
10 or dissemination of noxious weeds, is hereby authorized to
11 stop delivery, stop sale, seize, destroy, treat, or order returned
12 to the point of origin, at the owner's expense, any noxious
13 weed, article or substance, whatsoever, if it is being transported
14 or moved within this state, or if it exists on any premises with-
15 in the state, or if it is being brought into this state from any
16 place outside thereof, if such is found by him to be infested
17 with any noxious weed subject to this article.

§19-12D-8. Cooperation with federal and state agencies; drug producing plants declared noxious.

1 (a) The commissioner is authorized to cooperate in any
2 way with any person in order to prevent the establishment of
3 noxious weeds in this state.

4 (b) The commissioner is authorized to cooperate in any
5 way with any person in programs designed to suppress or control
6 noxious weeds already widely distributed in the state
7 without first declaring a quarantine.

8 (c) The commissioner may, upon request, cooperate with
9 federal and state agencies and political subdivisions in the
10 enforcement of the narcotic laws to the extent of preventing
11 the spread of and destroying marihuana or hemp, Cannabis
12 spp., or other plants which produce drugs which have been
13 condemned for destruction under the narcotics laws: *Provided*,
14 That nothing herein shall authorize the commissioner
15 to participate in a criminal investigation or prosecution under
16 the controlled substances act or federal narcotic laws. Such
17 drug producing plants are hereby declared noxious.

§19-12D-9. Right of entry.

1 To effectuate the purpose of this article, the commissioner
2 is hereby invested with authority to enter upon any public or
3 private premises, except private residences, and the curtilage
4 thereof, at reasonable times, after reasonable notification to the
5 owner and tenant or agent in order to examine and sample all
6 plants and trees, soil, articles, and substances which are sus-

7 pected of being infested with a noxious weed in discharge of
8 the duties prescribed by this article.

§19-12D-10. Review of actions of commissioner.

1 Any person aggrieved by any action of the commissioner
2 may obtain a review thereof by filing in a court of competent
3 jurisdiction, within thirty days of notice of the action, a writ-
4 ten petition praying that the action of the commissioner be
5 enjoined or set aside. A copy of such petition shall forthwith be
6 delivered to the commissioner and within thirty days thereafter
7 the commissioner shall certify and file in the court a transcript
8 of any record pertaining thereto, including a transcript of evi-
9 dence received, whereupon the court shall have jurisdiction to
10 affirm, set aside, or modify the action of the commissioner,
11 except that the findings of the commissioner as to the facts, if
12 supported by substantial evidence, shall be conclusive.

§19-12D-11. Penalties.

1 Any person violating any of the provisions of this article,
2 or the rules and regulations adopted thereunder, shall be
3 deemed guilty of a misdemeanor, and, upon conviction thereof,
4 shall be fined not less than ten dollars nor more than one
5 hundred dollars.

6 It shall be the duty of the prosecuting attorney of the
7 county in which the violation occurred to represent the
8 commissioner, to institute proceedings and to prosecute the
9 person charged with such violation. In the event a county or
10 prosecuting attorney refuses to act on behalf of the com-
11 missioner, the attorney general shall so act.

:

CHAPTER 6

(H. B. 936—By Mr. Shiflet and Mrs. Pitsenberger)

[Passed March 2, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article three, chapter
sixty of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to providing that the alcohol beverage control commissioner compensate each state agency an amount of one hundred dollars a month for upkeep, utilities and operating expenses.

Be it enacted by the Legislature of West Virginia:

That section seven, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-7. Agencies classified; compensation and bond of agent.

1 The commissioner shall classify state agencies into not more
2 than five groups with respect to volume of business. An agent
3 shall be compensated in a fixed sum, uniform within each
4 group, and in an amount to be fixed by the commissioner, but
5 not more than six thousand dollars in any one year: *Provided,*
6 That the commissioner shall compensate each agent an addi-
7 tional one hundred dollars a month for the specific purposes
8 of paying for utilities, renovations and operating expenses of
9 the agency.

10 Each agent shall give bond in an amount fixed by the com-
11 missioner conditioned upon the faithful observance of the pro-
12 visions of this chapter, compliance with the rules and regula-
13 tions of the commissioner, and the accounting for and paying
14 over of all moneys coming into his custody by virtue of his
15 agency. An agent shall not, at any time, have on hand a stock
16 of alcoholic liquors greater in value than the amount of his
17 bond.

+

CHAPTER 7

(Com. Sub. for H. B. 701—By Mr. Speaker, Mr. McManus)

[Passed March 17, 1976; in effect from passage. Approved by the Governor.]

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

Be it enacted by the Legislature of West Virginia:

Title

1. **General Provisions.**
2. **Appropriations.**
3. **Administration.**

TITLE 1. GENERAL PROVISIONS.

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.

1 **Section 1. General Policy.**—The purpose of this act is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state and
4 its agencies during the fiscal year one thousand nine hundred
5 seventy-seven.

1 **Sec. 2. Definitions.**—For the purpose of this act:

2 “Governor” shall mean the Governor of the State of West
3 Virginia.

4 “Spending unit” shall mean the department, agency or
5 institution to which an appropriation is made.

6 The “fiscal year one thousand nine hundred seventy-seven”
7 shall mean the period from July first, one thousand nine hun-
8 dred seventy-six through June thirtieth, one thousand nine
9 hundred seventy-seven.

10 “From collections” shall mean that part of the total ap-
11 propriation which must be collected by the spending unit
12 to be available for expenditure. If the authorized amount
13 of collections is not collected, the total appropriation for
14 the spending unit shall be reduced automatically by the
15 amount of the deficiency in the collection. If the amount
16 collected exceeds the amount designated “from collections”
17 the excess shall be set aside in a special surplus fund and
18 may be expended for the purpose of the spending unit as
19 provided by Chapter 5-A, Article 2 of the Code of West Vir-
20 ginia.

1 **Sec. 3. Classification of Appropriations.**—An appropria-
2 tion for:

3 “Personal services” shall be expended only for the payment
4 of salaries, wages, fees and other compensation for skill,
5 work or employment, except from the appropriations made
6 to the spending units of state government, there may be
7 transferred upon approval of the Governor, to a special
8 account an amount sufficient to match federal funds under
9 any federal act. That part of an appropriation which relates
10 to personal services payments (whether so itemized “personal
11 services” or included within other itemization) has been
12 funded in sufficient amount to provide for the \$1,000 cost-
13 of-living salary increase for eligible employees mandated by
14 Enrolled House Bill No. 1590, Acts of the Legislature, regular
15 session, 1976.

16 Unless otherwise specified, appropriations for personal ser-
17 vices shall include salaries of heads of spending units;

18 “Current expenses” shall be expended only for operating
19 cost other than personal services or capital outlay;

20 “Repairs and alterations” shall include all expenditures for
21 materials, supplies and labor used in repairing and altering
22 buildings, grounds and equipment, other than personal services;

23 “Equipment” shall be expended only for things which have
24 an appreciable and calculable period of usefulness in excess
25 of one year;

26 “Buildings” shall include construction and alteration of
27 structures and the improvements of lands, sewer and water
28 improvements, and shall include shelter, support, storage,
29 protection, or the improvement of a natural condition;

30 “Lands” shall be expended only for the purchase of lands
31 or interest in lands.

32 Appropriations otherwise classified shall be expended only
33 where the distribution of expenditures for different purposes
34 cannot well be determined in advance or it is necessary or
35 desirable to permit the spending unit freedom to spend an
36 appropriation for more than one of the above purposes.

1 **Sec. 4. Method of Expenditure.**—Money appropriated by
2 this act, unless otherwise specifically directed, shall be appro-

- 3 priated and expended according to the provisions of Chapter
 4 12, Article 3 of the Code of West Virginia, according to any
 5 law detailing a procedure specifically limiting that article.

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§12. Sinking fund deficiencies.	
§13. Appropriations from taxes and license fees.	
§14. Appropriations to pay costs of publication of delinquent corporations.	
§15. Appropriations for local governments.	
§16. Total appropriations.	
§17. General school fund.	

- 1 **Section 1. Appropriations from General Revenue.**—From
- 2 the state fund, general revenue, there is hereby appropriated
- 3 conditionally upon the fulfillment of the provisions set forth

4 in Chapter 5-A, Article 2 of the Code of West Virginia, the
 5 following amounts, as itemized, for expenditure during the
 6 fiscal year one thousand nine hundred seventy-seven.

LEGISLATIVE

1—*Senate*

Acct. No. 101

Fiscal Year
1976-77

1	Compensation of Members	\$ 235,000
2	Compensation and per diem of officers and	
3	employees	650,000
4	Expenses of Members	130,000
5	Current Expenses and Contingent Fund	130,000
6	Printing Blue Book	107,000

7 The distribution of which shall be by the office of the
 8 Clerk of the Senate and shall include seventy-five copies for
 9 each member of the Legislature and two copies to each clas-
 10 sified and approved High and Junior High school and one to
 11 each Elementary school within the state.

12 The appropriations for the Senate for the fiscal year 1975-
 13 76 are to remain in full force and effect, and are hereby re-
 14 appropriated to June 30, 1977.

15 Any balances so reappropriated may be transferred and
 16 credited to the 1976-77 accounts.

17 Upon written request of the Clerk of the Senate the State
 18 Auditor shall transfer amounts between items of the total
 19 appropriation in order to protect or increase the efficiency
 20 of service.

21 The Clerk of the Senate with approval of the President is
 22 authorized to draw his requisitions upon the Auditor, payable
 23 out of the Current Expenses and Contingent Fund of the
 24 Senate, for any bills for supplies and services that may have
 25 been incurred by the Senate and not included in the appro-
 26 priation bill, for supplies and services incurred in preparation
 27 for the opening, the conduct of the business and after adjourn-
 28 ment of any regular or extraordinary session, and for the
 29 necessary operation of the Senate offices, the requisition for

30 same to be accompanied by the bills to be filed with the
31 Auditor.

32 The Clerk of the Senate with approval of the President
33 shall have authority to employ such staff personnel during
34 any session of the Legislature as shall be needed in addition to
35 staff personnel authorized by the Senate resolution adopted
36 during any such session. The Clerk of the Senate with ap-
37 proval of the President shall have authority to employ such
38 staff personnel between sessions of the Legislature as shall be
39 needed, the compensation of all staff personnel during and
40 between sessions of the Legislature, notwithstanding any such
41 Senate resolution, to be fixed by the President of the Senate.
42 The Clerk is hereby authorized to draw his requisitions for the
43 payments of all such staff personnel upon the State Auditor,
44 payable out of the appropriation for compensation and per
45 diem of officers and employees or Current Expenses and Con-
46 tingent Fund of the Senate for such services.

47 For duties imposed by law and the Senate, the Clerk of the
48 Senate shall be paid a monthly salary of two thousand seven
49 hundred dollars, payable out of the amount appropriated for
50 compensation and per diem of officers and employees.

2—House of Delegates

Acct. No. 102

1	Compensation of Members	\$	540,000
2	Compensation and per diem of officers and		
3	employees		410,000
4	Expenses of Members		320,000
5	Current Expenses and Contingent Fund		290,000

6 The appropriations for the House of Delegates for the fiscal
7 year 1975-76 are to remain in full force and effect, and are
8 hereby reappropriated to June 30, 1977.

9 Any balances so reappropriated may be transferred and
10 credited to the 1976-77 accounts.

11 Upon written request of the Clerk of the House of Dele-
12 gates the State Auditor shall transfer amounts between
13 items of the total appropriation in order to protect or increase
14 the efficiency of the service.

15 The Clerk of the House of Delegates, with approval of

16 the Speaker, is authorized to draw his requisitions upon the
17 Auditor, payable out of the Contingent Fund of the House
18 of Delegates, for any bills for supplies and services that may
19 have been incurred by the House of Delegates, and not in-
20 cluded in the appropriation bill, for bills for services and
21 supplies incurred in preparation for the opening of the session
22 and after adjournment, and for the necessary operation of the
23 House of Delegates' offices, the requisition for the same to
24 be accompanied by bills to be filed with the Auditor.

25 For duties imposed by law and by the House of Delegates,
26 including salary allowed by law as keeper of the rolls, the Clerk
27 of the House of Delegates shall be paid a monthly salary
28 as provided in a House Resolution adopted January, 1976, pay-
29 able from the Per Diem of Officers and Employees Fund or
30 the Contingent Fund of the House of Delegates, and the full-
31 time employees of the House of Delegates shall be paid at
32 the salaries provided in said resolution.

33 The Speaker of the House of Delegates, upon approval of
34 the House Committee on Rules, shall have authority to employ
35 such staff personnel during and between sessions of the Leg-
36 islature as shall be needed, and the Clerk of the House is
37 hereby authorized to draw requisitions upon the State Auditor,
38 payable from the Per Diem of Officers and Employees Fund or
39 the Contingent Fund of the House of Delegates, for such ser-
40 vices.

3—*Joint Expenses*

Acct. No. 103

1	Joint Committee on Government and Finance	—\$	3,120,857
2	To Pay the Cost of Legislative Printing	-----	550,000

3 The appropriations for Joint Expenses for the fiscal year
4 1975-76 are to remain in full force and effect and are here-
5 by reappropriated to June 30, 1977. Any balances so reap-
6 propriated may be transferred and credited to the 1976-77
7 accounts.

8 Upon written request of the Clerk of the Senate and the
9 Clerk of the House of Delegates, the State Auditor shall trans-
10 fer amounts between items of the total appropriation in order
11 to protect or increase the efficiency of the service.

JUDICIAL

4—*Supreme Court—General Judicial*

Acct. No. 111

1	Personal Services	\$ 5,616,938
2	Other Expenses	1,836,300
3	Judges Retirement System	1,000,000
4	Other Court Costs	1,572,000
5	Magistrate Training Program	50,000
6	Total	\$ 10,075,238

7 This appropriation shall be administered by the Adminis-
 8 trative Director of the State Supreme Court of Appeals who
 9 shall draw his requisitions for warrants in payments in the
 10 form of payrolls, making deductions therefrom, as required
 11 by law, for taxes and other items. The appropriation for
 12 Judges' Retirement System is to be transferred to the Judges'
 13 Retirement Fund, in accordance with the law relating thereto
 14 upon requisition of the Administrative Director of the State
 15 Supreme Court of Appeals.

16 Any unexpended balance remaining in this appropriation
 17 at the close of fiscal year 1975-76 is hereby reappropriated
 18 for expenditures during fiscal year 1976-77.

EXECUTIVE

5—*Governor's Office*

Acct. No. 120

1	Salary of Governor	\$ 41,854
2	Other Personal Services	222,128
3	Current Expenses	60,000
4	Equipment	15,000
5	Publication of Governor's Papers and	
6	Inaugural Expense	100,000
7	Total	\$ 438,982

8 Any unexpended balance remaining at the close of the fiscal
 9 year 1975-76 for "Publication of Governor's Papers and
 10 Inaugural Expense" is hereby reappropriated for expenditure
 11 during the fiscal year 1976-77.

6—Governor's Office—Custodial Fund**Acct. No. 123**

- 1 **Total**\$ 91,500
- 2 To be used for current general expenses, including compen-
3 sation of employees, household maintenance, cost of official
4 functions, and any additional household expenses occasioned
5 by such official functions.

7—Governor's Office—Civil Contingent Fund**Acct. No. 124**

- 1 **Total**\$ 250,000
- 2 Of this appropriation there may be expended, at the dis-
3 cretion of the governor, an amount not to exceed \$1,000.00
4 as West Virginia's contribution to the Interstate Oil Compact
5 Commission.
- 6 Any unexpended balance remaining in this appropriation
7 at the close of the fiscal year 1975-76 is hereby reappropriated
8 for expenditure during the fiscal year 1976-77.

8—Governor's Office—Federal-State Coordination**Acct. No. 125**

- 1 Federal-State Coordination\$ 1,560,000
- 2 Governor's Committee on Crime, Delinquency
3 and Correction 575,000
- 4 Regional Councils—To Match Federal Funds — 220,000
- 5 **Total**\$ 2,355,000
- 6 Any unexpended balance remaining in accounts "Federal-
7 State Coordination," "Governor's Committee on Crime, Delin-
8 quency and Correction," and "Regional Councils—To Match
9 Federal Funds" at the close of the fiscal year 1975-76 is here-
10 by reappropriated for expenditure during the fiscal year
11 1976-77.

9—Governor's Office—Disaster Relief-Matching**Acct. No. 126**

- 1 **Total**\$ 50,000

- 2 To match and aid federal or any programs, and any part of
 3 this appropriation may be transferred to any department for
 4 such purposes.

10—*Governor's Office—McMechen and Stonewood Relief*

Acct. No. 127

- 1 Any unexpended balance remaining in the appropriation
 2 for "Governor's Office—McMechen and Stonewood Relief" at
 3 the close of the fiscal year 1975-76, is hereby reappropriated
 4 for expenditure during the fiscal year 1976-77.

11—*West Virginia Commission on Energy, Economy
 and Environment*

Acct. No. 129

- 1 Any unexpended balance remaining in the appropriation
 2 for "West Virginia Commission on Energy, Economy and
 3 Environment" at the close of the fiscal year 1975-76, is here-
 4 by reappropriated for expenditure during the fiscal year
 5 1976-77.

12—*Office of Emergency Services*

Acct. No. 130

1	Personal Services	\$	154,000
2	Current Expenses		41,840
3	Equipment		7,800
4	Total	\$	203,640

FISCAL

13—*Auditor's Office—General Administration*

Acct. No. 150

1	Salary of State Auditor	\$	28,750
2	Other Personal Services		837,247
3	Current Expenses		230,110
4	Equipment		39,700

5	Mental Hygiene Fund _____	100,000
6	Microfilm _____	10,000
7	Total _____	\$ 1,245,807

14—Auditor's Office—Social Security

Acct. No. 151

- 1 To match contributions of state employees
2 for social security _____ \$ 11,000,000
- 3 The above appropriation is intended to cover the state's
4 share of social security costs for those spending units oper-
5 ating from General Revenue Fund. The State Department of
6 Highways, Department of Motor Vehicles, Workmen's Com-
7 pensation Commission, Public Service Commission, and other
8 departments operating from Special Revenue Fund and/or
9 Federal Funds shall pay their proportionate share of the
10 social security cost for their respective divisions.
- 11 Any unexpended balance remaining in the appropriation
12 for "Auditor's Office—Social Security" at the close of the
13 fiscal year 1975-76, is hereby reappropriated for expenditure
14 during the fiscal year 1976-77.

15—Treasurer's Office

Acct. No. 160

1	Salary of State Treasurer _____	\$ 28,750
2	Other Personal Services _____	264,000
3	Current Expenses _____	120,000
4	Equipment _____	25,000
5	Microfilm Program _____	7,000
6	Total _____	\$ 444,750

16—Treasurer's Office—School Building Sinking Fund

Acct. No. 165

- 1 Total _____ \$ 9,432,500
- 2 Any unexpended balance remaining in the appropriation

- 3 for "Treasurer's Office—School Building Sinking Fund" at
 4 the close of the fiscal year 1975-76, is hereby reappropriated
 5 for expenditure during the fiscal year 1976-77.

17—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services	\$	52,079
2	Current Expenses		6,000
3	Equipment		3,000
4	Total	\$	61,079

18—*State Tax Department*

Acct. No. 180

1	Personal Services	\$	3,131,840
2	Current Expenses		2,178,700
3	Equipment		115,000
4	Circuit Breaker Reimbursement		200,000
5	Total	\$	5,625,540

- 6 The above appropriation "Circuit Breaker Reimbursement"
 7 is to be used in accordance with Engrossed House Bill No.
 8 751, 1972 Regular Session of the Legislature.

19—*State Tax Department—
 Property Appraisal*

Acct. No. 185

1	Personal Services	\$	1,384,087
2	Other Expenses		885,030
3	Reimbursement to Counties for		
4	Computerization		80,000
5	Total	\$	2,349,117
6	Any balance remaining in the "Property Appraisal Account"		

- 7 at the close of the fiscal year 1975-76 is hereby reappropriated
 8 for expenditure during the fiscal year 1976-77.

20—*State Commissioner of Public Institutions*

Acct. No. 190

1	Salary of Commissioner _____	\$	27,500
2	Salaries of Board Members—		
3	Board of Probation and Parole _____		48,000
4	Other Personal Services _____		672,926
5	Current Expenses _____		164,730
6	Repairs and Alterations _____		650
7	Equipment _____		4,000
8	Total _____	\$	917,806

21—*Department of Finance and Administration*

Acct. No. 210

1	Personal Services _____	\$	1,322,052
2	Current Expenses _____		440,270
3	Repairs and Alterations _____		79,700
4	Equipment _____		20,000
5	Postage _____		600,600
6	Records Management _____		58,025
7	State Agency Surplus Property _____		84,040
8	Utilities _____		550,000
9	Fire Service Fee _____		73,965
10	Building Equipment and Supplies _____		25,000
11	Major Building Repairs _____		1,500,000
12	Total _____		\$4,753,652

- 13 The Workmen's Compensation Commission, Department of
 14 Welfare, Public Service Commission, Department of Natural
 15 Resources, Department of Motor Vehicles, State Department
 16 of Highways, State Health Department and State Tax De-
 17 partment—Income Tax Division shall reimburse the Postage
 18 appropriation of the Department of Finance and Adminis-
 19 tration monthly for all meter service. Any spending unit

20 operating from Special Revenue or receiving reimbursement
21 for postage costs from the Federal Government shall refund
22 to the Postage account of the Department of Finance and
23 Administration such amounts. Should this appropriation for
24 Postage be insufficient to meet the mailing requirements of
25 the State spending units as set out above, any excess postage
26 meter service requirements shall be a proper charge against
27 the units, and each spending unit shall refund to the Postage
28 appropriation of the Department of Finance and Administration
29 any amounts required for the Department for postage
30 in excess of this appropriation.

31 Any unexpended balance remaining in the "Postage Ac-
32 count" at the close of the fiscal year 1975-76 is hereby re-
33 appropriated for expenditure during the fiscal year 1976-77.

34 Any unexpended balance remaining at the close of the
35 fiscal year 1975-76 for "Major Building Repairs" is hereby
36 reappropriated for expenditure during the fiscal year 1976-77.

37 (Major Building Repairs to include maintenance and repairs
38 to Governor's Mansion).

39 State Department of Highways, shall reimburse the appro-
40 priation of the Department of Finance and Administration
41 monthly for all actual expenses incurred pursuant to the
42 provisions of Chapter 17, Article 2A, Section 13 of the
43 Code of West Virginia.

44 There also is appropriated for the State Agency for Surplus
45 Property all sums of money collected by that agency from
46 the sale of surplus state property which has been declared
47 expendable by the director of the Purchasing Division, and a
48 special account created for expenditure for the purchase of
49 operating equipment.

22—*State Board of Insurance*

Acct. No. 225

1	Personal Services	\$	42,230
2	Current Expenses		11,040
3	Equipment		700

4	Self-Insurance Fund	600,000
5	Combined Insurance Premiums	1,000,000

6 Total\$ 1,653,970

7 The above appropriation on line 5 is for the purpose of
 8 paying premiums for fire, automobile and bonds for the var-
 9 ious state agencies. Should this appropriation be insufficient
 10 to meet the premium requirements of the state spending units,
 11 any excess premium requirements shall be a proper charge
 12 against the units and each spending unit shall reimburse to
 13 the Board of Insurance any amount required for that depart-
 14 ment for premiums in excess of this appropriation.

15 Any unexpended balance remaining in the appropriation for
 16 "Self-Insurance Fund" at the close of the fiscal year 1975-76
 17 is hereby reappropriated for expenditure during the fiscal year
 18 1976-77.

19 Any or all of the funds appropriated for "Self-Insurance
 20 Fund" may be transferred to a special account for disburse-
 21 ment for payment of premiums and self-insurance losses.

LEGAL

23—Attorney General

Acct. No. 240

1	Salary of Attorney General	\$ 29,500
2	Other Personal Services	894,792
3	Current Expenses	104,000
4	Equipment	16,000
5	To protect the resources or tax structure of	
6	the State in controversies or legal proceedings	
7	affecting same	3,250
8	Consumer Protection	130,510
9	Total	\$ 1,178,052

10 When legal counsel or secretarial help is appointed by the
 11 Attorney General, for any state spending unit, this account
 12 shall be reimbursed from such unit's appropriated account in

13 an amount agreed upon by the Attorney General and the pro-
14 per authority of said spending unit.

15 The above appropriation for "Consumer Protection" is to
16 be used in accordance with Engrossed Senate Bill No. 240,
17 1974 Regular Session of the Legislature.

18 Any unexpended balance remaining in the appropriation for
19 "Buffalo Creek Legal Expenses" at the close of the fiscal year
20 1975-76, is hereby reappropriated for expenditure during the
21 fiscal year 1976-77.

22 The appropriation "Buffalo Creek Legal Expenses" is to
23 pay for legal expenses in instituting legal proceedings to re-
24 compensate the state and its local governments, including
25 boards of education, for expenditures incurred as a result of
26 the disaster at Buffalo Creek on February 26, 1972.

24—*Commission on Uniform State Laws*

Acct. No. 245

1 Total\$ 7,500

2 To pay expenses of members of the Commission on Uni-
3 form State Laws.

INCORPORATING AND RECORDING

25—*Secretary of State*

Acct. No. 250

1	Salary of Secretary of State	\$ 28,750
2	Other Personal Services	213,586
3	Current Expenses	50,000
4	Equipment	24,000
5	Certification of Primary and General	
6	Elections	3,000
7	Total	\$ 319,336

EDUCATIONAL

26—*State Department of Education*

Acct. No. 277

1	Teacher Education Program	\$	131,250
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27—*West Virginia Board of Regents (Control)*

Acct. No. 279

1	Personal Services	\$	71,000,000
2	Current Expenses		13,891,156
3	Repairs and Alterations		2,520,000
4	Equipment		3,255,000
5	Oak Wilt Research		13,200
6	Veterinary Tuition		349,000
7	Educational TV		718,576
8	Bureau for Coal Research		800,000
9	Forestry Products		146,500
10	Regional Research Institute		100,000
11	Intensive Agricultural Demonstration Trial		33,700
12	Community and Development Research		29,000
13	Center for Economic Action		56,400
14	New Programs		360,000
15	Unclassified		330,000
16	Title I—Matching Funds		133,000
17	Scholarship Program		1,650,000
18	Awareness Program		53,000
19	Facilities and Scholarship Program		82,000
20	Agricultural Experiment Station—Intensive		
21	Horticultural Demonstration		38,000
22	Optometry Tuition		110,000
23	Podiatry Tuition		11,000
24	Architectural Education Tuition		40,000
<hr/>			
25	Total	\$	95,719,532

28—*West Virginia Board of Regents*

Acct. No. 280

1	Personal Services	\$ 440,000
2	Current Expenses	115,000
3	Equipment	1,500
4	Total	\$ 556,500

29—*West Virginia College of Osteopathic Medicine*

Acct. No. 281

1	Total	\$ 1,650,000
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30—*Marshall University—Medical School*

Acct. No. 284

1	Total	\$ 871,915
2	Any unexpended balance remaining in this appropriation	
3	at the close of the fiscal year 1975-76 is hereby reappropria-	
4	ted for expenditure during the fiscal year 1976-77.	

31—*West Virginia University—Medical School*

Acct. No. 285

1	Personal Services	\$ 7,304,812
2	Current Expenses	3,464,995
3	Repairs and Alterations	368,200
4	Equipment	256,900
5	Family Practice Residency Support Program	300,000
6	Intern and Residency Support Programs for	
7	Community Hospitals	675,000
8	Total	\$ 12,369,907
9	To be transferred to the West Virginia University—Medi-	
10	cal School Fund upon the requisition of the Governor.	

32—*Department of Education*

Acct. No. 286

1	Personal Services	\$ 852,500
2	Current Expenses	224,300
3	Equipment	11,000
4	National Defense Education Act	445,000
5	Statewide Testing Program	131,000
6	Safety Education—Aid to Counties	210,000
7	State Aid to Children's Home	75,000
8	Regional Education Service Agency	457,000
9	Project 0629-061, Identification & Remediation	
10	of Learning Disabilities	50,000
11	Project 0629-062, Diagnosis and Remediation of	
12	Learning Disabilities	50,000
13	Project 0629-067, Early Learning and Child	
14	Care ..	50,000
15	Project 0629-077, Early Learning and Child	
16	Care	50,000
17	Project 0629-078, Early Learning and Child	
18	Care	50,000
19	Total	\$ 2,655,800

20 The above appropriation includes the State Board of Edu-
 21 cation and their executive offices.

22 Any part or all of the appropriation for "National Defense
 23 Education Act" may be transferred to a Special Revenue Fund
 24 for the purpose of matching Federal Funds for this program.

33—*State Department of Education—School Lunch Program*

Acct. No. 287

1	Personal Services	\$ 123,000
2	Current Expenses	30,000
3	Aid to Counties—Includes hot lunches and	
4	canning for hot lunches	1,327,104
5	Total	\$ 1,480,104

34—*State Board of Education—Vocational Division*

Acct. No. 289

1	Personal Services	\$ 168,000
2	Current Expenses	51,950
3	Equipment	3,575
4	Vocational Aid	6,869,500
5	Adult Basic Education	500,000
6	Total	\$ 7,593,025
7	Any unexpended balance remaining in the appropriation	
8	for "Building Construction" at the close of the fiscal year	
9	1975-76, is hereby reappropriated for expenditure during the	
10	fiscal year 1976-77.	

35—*State Department of Education—Professional Educators*

Acct. No. 290

1	Total	\$ 27,629,371
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36—*Educational Broadcasting Authority*

Acct. No. 291

1	Personal Services	\$ 52,932
2	Current Expenses	29,255
3	Equipment	2,500
4	Regional ETV	1,365,000
5	Total	\$ 1,449,687
6	For participation in the construction and operation of	
7	Regional ETV stations by Marshall University, Concord Col-	
8	lege, Bluefield State College, West Virginia Institute of Tech-	
9	nology and West Virginia State College and may be trans-	
10	ferred to special revenue accounts for matching County and/or	
11	Federal Funds.	

37—*State Board of Education—Vocational Division*

Acct. No. 292

1 Total _____\$ —0—

38—*State Board of Education—Vocational Division*

Acct. No. 294

1 Total _____\$ 300,000

2 Any unexpended balance remaining in the appropriation
3 “Aid to Counties” at the close of the fiscal year 1975-76 is
4 hereby reappropriated for expenditure during the fiscal year
5 1976-77.

39—*State Department of Education—State Aid to Schools*

Acct. No. 295

1	Professional Services	\$168,126,170
2	Salaries—Other Personnel	33,625,234
3	Fixed Charges	15,837,485
4	Transportation Charges	9,303,040
5	Administration	1,681,240
6	Other Current Expenses	20,175,140
7	National Average Attainment	14,092,639
8	Program Improvement	1,939,503
9	Increased Enrollment	700,000
10	Sub Total	\$265,480,451
11	Less Local Share	48,874,036
12	Total	\$216,606,415

40—*Department of Education—Aid for Exceptional Children*

Acct. No. 296

1	Personal Services	\$ 183,000
2	Current Expenses	70,835

3	Out-of-State Instruction	360,000
4	Aid to Counties	4,500,000
5	Total	\$ 5,113,835

6 The appropriation for "Out-of-State Instruction" may be
 7 expended to provide instruction, care and maintenance for
 8 educable persons who have multiple handicaps and for whom
 9 the state provides no facilities.

41—*State Board of Education—Early Childhood Aides*

Acct. No. 297

1	Early Childhood Aides	\$ 2,882,880
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42—*Teacher's Retirement Board*

Acct. No. 298

1	Teachers Retirement Fund	\$ 27,000,000
2	Employers Accumulation Fund	5,000,000
3	Expense Fund	35,000
4	Total	\$ 32,035,000

43—*Department of Education*

Acct. No. 299

1	To fund minimum salaries for Support Per-	
2	sonnel—Total	\$ 11,500,000

44—*West Virginia Schools for the Deaf and the Blind*

Acct. No. 333

1	Personal Services	\$ 1,773,500
2	Current Expenses	450,000
3	Repairs and Alterations	103,000

4	Equipment	95,000
5	Total _____	\$ 2,421,500

45—State FFA-FHA Camp and Conference Center

Acct. No. 336

1	Personal Services _____	\$ 90,000
2	Current Expenses _____	18,500
3	Repairs and Alterations _____	21,000
4	Equipment _____	21,000
5	Total _____	\$ 150,500

46—Department of Archives and History

Acct. No. 340

1	Personal Services _____	\$ 141,000
2	Current Expenses _____	54,030
3	Repairs and Alterations _____	2,000
4	Equipment _____	30,000
5	Total _____	\$ 227,030

47—West Virginia Library Commission

Acct. No. 350

1	Personal Services _____	\$ 530,000
2	Current Expenses _____	146,390
3	Repairs and Alterations _____	3,500
4	Equipment _____	5,000
5	Grants-in-Aid _____	2,000,000
6	Library Matching Funds _____	1,500,000
7	Books and Periodicals _____	60,000
8	Total _____	\$ 4,244,890
9	Any unexpended balance remaining in the appropriation for	
10	"Library Matching Funds" at the close of the fiscal year 1975-	

- 11 76 is hereby reappropriated for expenditure during the fiscal
12 year 1976-77.

CHARITIES AND CORRECTION

48—*Anthony Center*

Acct. No. 369

1	Personal Services	\$	291,300
2	Current Expenses		120,000
3	Repairs and Alterations		15,000
4	Equipment		14,500
5	Total	\$	440,800

49—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$	772,000
2	Current Expenses		257,000
3	Repairs and Alterations		65,000
4	Equipment		34,500
5	Total	\$	1,128,500

50—*Davis Center*

Acct. No. 371

1	Personal Services	\$	286,000
2	Current Expenses		150,000
3	Repairs and Alterations		17,000
4	Equipment		22,000
5	Total	\$	475,000

51—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$	500,000
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2	Current Expenses	160,000
3	Repairs and Alterations	35,000
4	Equipment	42,000
5	Vocational Training	5,000
		<hr/>
6	Total	\$ 742,000

52—Leckie Center

Acct. No. 373

1	Personal Services	\$ 285,000
2	Current Expenses	151,000
3	Repairs and Alterations	38,000
4	Equipment	20,000
		<hr/>
5	Total	\$ 494,000

53—West Virginia State Prison for Women

Acct. No. 374

1	Personal Services	\$ 187,000
2	Current Expenses	92,000
3	Repairs and Alterations	21,000
4	Equipment	12,000
		<hr/>
5	Total	\$ 312,000

54—West Virginia Penitentiary

Acct. No. 375

1	Personal Services	\$ 2,066,000
2	Current Expenses	1,200,000
3	Repairs and Alterations	84,500
4	Equipment	200,000
		<hr/>
5	Total	\$ 3,550,500
6	Any unexpended balance remaining in the accounts "Re-	
7	placement of Sanitary System (Sewers) and Construction of	

8 Boiler Plant"; and "Purchase of Building and Land" at the
 9 close of the fiscal year 1975-76 is hereby reappropriated for
 10 expenditure during the fiscal year 1976-77.

11 Any or all of the accounts "Replacement of Sanitary Sy-
 12 stem (Sewers) and Construction of Boiler Plant" may be used
 13 to match and aid Federal Funds.

55—*Huttonsville Correctional Center*

Acct. No. 376

1	Personal Services	\$	1,250,000
2	Current Expenses		723,000
3	Repairs and Alterations		73,000
4	Equipment		13,000
5	Total	\$	2,059,000

56—*West Virginia State Industries*

Acct. No. 377

1	Operating Expenses	\$	—0—
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57—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services	\$	150,000
2	Current Expenses		76,296
3	Repairs and Alterations		15,300
4	Equipment		16,060
5	Total	\$	257,656

58—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services	\$	665,000
2	Current Expenses		340,000

3	Repairs and Alterations	39,500
4	Equipment	40,000
5	Total	\$ 1,084,500

HEALTH AND WELFARE

59—State Health Department

Acct. No. 400

1	Personal Services	\$ 1,300,000
2	Current Expenses	275,000
3	Equipment	37,500
4	Cancer Control and Treatment	255,000
5	Local Health Services	2,000,000
6	Heart Disease Control	142,000
7	Dental Clinics	170,000
8	Maternal and Child Healthmobile Medical	
9	Examination Clinic	695,500
10	Hospital and Medical Facilities Construction	
11	Program	20,000
12	Mobile Chest X-ray Diagnostic Services for	
13	Tuberculosis Control	90,000
14	Home Health Services	48,000
15	Special Project for Eradication of Tubercu-	
16	losis	285,000
17	Environmental Health Services	196,000
18	Nursing Home Inspection Unit	98,000
19	Biologicals for Immunization and Venereal	
20	Disease	210,000
21	Early Childhood Development Program	250,000
22	Regional Health Services	275,000
23	Emergency Medical Services	50,000
24	Total	\$ 6,397,000

60—Commission on Postmortem Examination

Acct. No. 401

1	Total	\$ 150,000
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- 2 Any unexpended balance remaining in the appropriation
 3 "Commission on Postmortem Examination" at the close of
 4 the fiscal year 1975-76 is hereby reappropriated for ex-
 5 penditure during the fiscal year 1976-77.

61—*Department of Veterans Affairs*

Acct. No. 403

- 1 In aid of Veterans Day Patriotic Exercises\$ 5,000
 2 To be expended subject to the approval of the Department
 3 of Veterans Affairs upon presentation of satisfactory plans
 4 by the Grafton G.A.R. Post, American Legion, Veterans of
 5 Foreign Wars and Sons of Veterans.

62—*Department of Veterans Affairs*

Acct. No. 404

- | | | |
|---|---|------------|
| 1 | Personal Services | \$ 420,000 |
| 2 | Current Expenses | 84,000 |
| 3 | Equipment | 5,500 |
| 4 | Educational opportunities for children of | |
| 5 | War Veterans | 20,000 |
| 6 | Total | \$ 529,500 |
- 7 Any unexpended balance remaining in the appropriation
 8 "To Provide Educational Opportunities for Children of War
 9 Veterans" at the close of the fiscal year 1975-76 is hereby
 10 reappropriated for expenditure during the fiscal year 1976-77.

63—*Department of Welfare*

Acct. No. 405

- | | | |
|---|--------------------------------|--------------|
| 1 | Personal Services | \$ 8,500,000 |
| 2 | Current Expenses | 2,363,530 |
| 3 | Equipment | 46,865 |
| 4 | Public Assistance Grants | 14,218,994 |
| 5 | T.R.I.P. | —0— |

6	Social Security Matching Fund	507,416
7	Services to Children, Aged, Blind and Disabled ..	7,284,261
8	Emergency Assistance Program	1,550,000
9	Total	\$ 34,471,066

64—*State Commission on Aging*

Acct. No. 406

1	Personal Services	\$ 71,000
2	Current Expenses	47,500
3	Equipment	700
4	Programs for Elderly	500,000
5	Total	\$ 619,200

65—*Department of Welfare—Food Stamp and
Government Donated Food*

Acct. No. 407

1	Personal Services	\$ —0—
2	Current Expenses	414,720
3	Equipment	12,500
4	Total	\$ 427,220

66—*Department of Welfare—Medical Program*

Acct. No. 408

1	Personal Services	\$ —0—
2	Current Expenses	995,000
3	Equipment	8,750
4	Direct Services	15,000,000
5	Total	\$ 16,003,750

67—*Department of Mental Health*

Acct. No. 410

1	Personal Services	\$ 950,000
2	Current Expenses	215,000
3	Equipment	13,500
4	Research and Training	10,000
5	Civil Service Costs	140,000
6	Division of Health Education	21,000
7	Community Mental Retardation Program	1,000,000
8	Alcohol and Drug Abuse Program	400,000
9	Community Mental Health Programs	2,500,000
10	Total	\$ 5,249,500
11	Any unexpended balance remaining in the appropriation	
12	for "Mental Health Center—Princeton" and "Logan-Mingo	
13	Area Mental Health Center" at the close of the fiscal year	
14	1975-76, is hereby reappropriated for expenditure during the	
15	fiscal year 1976-77.	

68—*Commission On Mental Retardation*

Acct. No. 411

1	Personal Services	\$ 56,000
2	Current Expenses	17,500
3	Equipment	2,000
4	Assistance to D.D.A. Projects	—0—
5	Total	\$ 75,500

69—*Greenbrier School for Mentally Retarded Children*

Acct. No. 414

1	Personal Services	\$ 718,000
2	Current Expenses	159,000
3	Repairs and Alterations	100,000
4	Equipment	60,000
5	Total	\$ 1,037,000

70—*Roney's Point Branch Hospital*

Acct. No. 417

1	Personal Services	\$	195,386
2	Current Expenses		58,281
3	Repairs and Alterations		20,000
4	Equipment		3,750
5	Total	\$	277,417

71—*Guthrie Center*

Acct. No. 418

1	Personal Services	\$	506,725
2	Current Expenses		211,275
3	Repairs and Alterations		45,000
4	Equipment		35,000
5	Total	\$	798,000

72—*Colin Anderson Center*

Acct. No. 419

1	Personal Services	\$	3,918,000
2	Current Expenses		600,000
3	Repairs and Alterations		90,000
4	Equipment		200,000
5	Total	\$	4,808,000

73—*Weston State Hospital*

Acct. No. 420

1	Personal Services	\$	5,297,000
2	Current Expenses		1,620,000
3	Repairs and Alterations		138,725
4	Equipment		114,450
5	Psychiatric Training Center for Student Nurses		150,000
6	Total	\$	7,320,175

74—Spencer State Hospital**Acct. No. 421**

1	Personal Services	\$ 3,150,000
2	Current Expenses	967,000
3	Repairs and Alterations	86,000
4	Equipment	82,000

5 **Total** **\$ 4,285,000**

6 Any unexpended balance remaining in "Boiler Plant" at
7 the close of fiscal year 1975-76, is hereby reappropriated for
8 expenditure during fiscal year 1976-77.

75—Huntington State Hospital**Acct. No. 422**

1	Personal Services	\$ 3,683,000
2	Current Expenses	1,065,000
3	Repairs and Alterations	155,000
4	Equipment	85,000
5	Student Nurse Affiliation Program	45,000

6 **Total** **\$ 5,033,000**

76—Lakin State Hospital**Acct. No. 423**

1	Personal Services	\$ 1,767,000
2	Current Expenses	525,000
3	Repairs and Alterations	99,000
4	Equipment	66,000

5 **Total** **\$ 2,457,000**

6 Any unexpended balance remaining in the appropriation
7 "To complete Heating System" at the close of the fiscal year
8 1975-76 is hereby reappropriated for expenditure during the
9 fiscal year 1976-77.

77—Barboursville State Hospital

Acct. No. 424

1	Personal Services	\$ 1,092,000
2	Current Expenses	253,000
3	Repairs and Alterations	23,000
4	Equipment	25,000
5	Total	\$ 1,393,000

78—Fairmont Emergency Hospital

Acct. No. 425

1	Personal Services	\$ 473,000
2	Current Expenses	351,000
3	Repairs and Alterations	9,000
4	Equipment	132,200
5	Total	\$ 965,200

79—Welch Emergency Hospital

Acct. No. 426

1	Personal Services	\$ 850,000
2	Current Expenses	349,400
3	Repairs and Alterations	95,000
4	Equipment	70,000
5	Total	\$ 1,364,400

80—Hopemont State Hospital

Acct. No. 430

1	Personal Services	\$ 2,862,000
2	Current Expenses	598,606
3	Repairs and Alterations	57,500
4	Equipment	90,000
5	Total	\$ 3,608,106

81—Pinecrest State Hospital**Acct. No. 431**

1	Personal Services	\$ 2,437,000
2	Current Expenses	727,000
3	Repairs and Alterations	119,000
4	Equipment	94,300
5	Total	<u>\$ 3,377,300</u>

82—Denmar State Hospital**Acct. No. 432**

1	Personal Services	\$ 1,792,000
2	Current Expenses	682,550
3	Repairs and Alterations	84,000
4	Equipment	129,300
5	Total	<u>\$ 2,687,850</u>

83—State Board of Education—Rehabilitation Division**Acct. No. 440**

1	Personal Services	\$ 1,240,000
2	Current Expenses	428,300
3	Rehabilitation Center	1,248,000
4	Case Services	1,833,113
5	Supervisory Services for Vending Stand Pro-	
6	gram for Blind	178,410
7	Training and Special Projects	500,192
8	Social Security Matching Fund	112,488
9	Program for Blind Food Service	<u>—0—</u>
10	Total	<u>\$ 5,540,503</u>
11	Any unexpended balances remaining in the appropriations	
12	for "Rehabilitation Center Construction" and "Program for	
13	Blind Food Service" at the close of the fiscal year 1975-76,	

14 are hereby reappropriated for expenditure during the fiscal
15 year 1976-77.

BUSINESS AND INDUSTRIAL RELATIONS*84—Bureau of Labor and Department of
Weights and Measures***Acct. No. 450**

1	Personal Services	\$	800,000
2	Current Expenses		228,450
3	Equipment		12,970
4	Total	\$	1,041,420

*85—Interstate Mining Compact Commission***Acct. No. 451**

1	Total	\$	—0—
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*86—Department of Mines***Acct. No. 460**

1	Personal Services	\$	2,200,000
2	Current Expenses		500,000
3	Equipment		53,025
4	Special Mine Drainage Program		50,000
5	Mine Training, Education and Certification		200,000
6	Total	\$	3,003,025

7 Any unexpended balance remaining in the appropriation for
8 "Subsidence-Federal Matching" at the close of the fiscal year
9 1975-76, is hereby reappropriated for expenditure during the
10 fiscal year 1976-77.

87—*Department of Commerce*

Acct. No. 465

1	Personal Services	\$ 675,000
2	Current Expenses	1,449,270
3	Equipment	47,000
4	Mt. State Forest Festival	25,000
5	Theatre Arts of West Virginia	—0—
6	Alpine Festival	7,500
7	Arts and Humanities Fund	283,000
8	West Virginia Water Festival	15,000
9	Oil and Gas Festival	2,500
10	White Water Weekend	3,000
11	Calhoun County Wood Festival	2,500
12	New Martinsville Regatta	2,500
13	Braxton County Regatta	4,000
14	National Youth Science Camp	223,856
15	Cherry River Festival	2,000
16	Mothers Day Founders Festival	15,000
17	Mountain Heritage Arts and Crafts Fair	5,000
18	Wellsburg July 4th Celebration	2,000
19	Sternwheel Regatta	1,000
20	Sistersville Outboard Regatta	1,000
21	West Virginia's Participation in American	
22	Bicentennial	325,000
23	Ohio River Festival	1,000
24	King Coal Festival	1,000
25	Industrial Development Revolving Fund	500,000
26	Independence Hall, Wheeling, West Virginia	150,000
27	Total	\$ 3,743,126

28 The above appropriations, Mt. State Forest Festival, Theatre
 29 Arts of West Virginia, West Virginia Water Festival, Oil and
 30 Gas Festival, White Water Weekend, Calhoun County Wood
 31 Festival, New Martinsville Regatta, Braxton County Regatta,
 32 Cherry River Festival, Mothers Day Founders Festival, Mt.
 33 Heritage Arts and Crafts Fair, Wellsburg July 4th Celebration,
 34 Sternwheel Regatta, Sistersville Outboard Regatta, Ohio River
 35 Festival and King Coal Festival shall be expended only upon

36 authorization of the Commerce Commissioner and in accord-
37 ance with the provisions of Chapter 5A and Chapter 12,
38 Article 3 of the Code of West Virginia.

39 All federal moneys received as reimbursement to the De-
40 partment of Commerce, for moneys expended from the Gen-
41 eral Revenue fund for Arts and Humanities are hereby reap-
42 propriated for the purposes as originally made, including
43 Personal Services, Current Expenses and Equipment.

44 Any unexpended balance remaining in the appropriation
45 for "Independence Hall, Wheeling, West Virginia" at the close
46 of the fiscal year 1975-76 is hereby reappropriated for ex-
47 penditure during the fiscal year 1976-77.

48 Any unexpended balance remaining in the appropriation for
49 "National Youth Science Camp" at the close of the fiscal year
50 1975-76 is hereby reappropriated for expenditure during the
51 fiscal year 1976-77.

52 Any unexpended balance remaining in the appropriation for
53 "West Virginia's Participation in American Bicentennial" at
54 the close of the fiscal year 1975-76, is hereby reappropriated
55 for expenditure during the fiscal year 1976-77.

88—Ohio River Basin Commission

Acct. No. 469

1 Total\$ 21,600

*89—State Commission on Manpower, Technology
and Training*

Acct. No. 470

1 Total\$ 10,000

90—Council of State Governments

Acct. No. 472

1 Total\$ 21,900

91—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1	West Virginia's contribution to Potomac River	
2	Basin Interstate Commission _____	\$ 12,450

92—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

1	West Virginia's contribution to the Ohio River	
2	Valley Water Sanitation Commission _____	\$ 40,575

93—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's contribution to Southern Re-	
2	gional Education Board _____	\$ 64,000
3	To be expended upon requisition of the Governor.	

94—*West Virginia Air Pollution Commission*

Acct. No. 476

1	Personal Services _____	\$ 430,000
2	Current Expenses _____	125,360
3	Equipment _____	9,325
4	Total _____	\$ 564,685

95—*Interstate Education Compact*

Acct. No. 477

1	West Virginia's contribution to Interstate Edu-	
2	cation Compact _____	\$ 14,250

96—*Antiquities Commission*

Acct. No. 478

1	Personal Services _____	\$ 26,400
2	Current Expenses _____	9,130

3	Equipment		2,150
4	Total	\$	37,680

97—Department of Banking

Acct. No. 480

1	Personal Services	\$	275,000
2	Current Expenses		166,550
3	Equipment		3,900
4	Total	\$	445,450

98—West Virginia State Aeronautics Commission

Acct. No. 485

1	Personal Services	\$	37,000
2	Current Expenses		22,845
3	Equipment		2,000
4	Aerial Markers		1,200
5	Civil Air Patrol Expenses		18,500
6	Airport Matching		1,000,000
7	Total	\$	1,081,545

8 Any unexpended balance remaining in the appropriation
9 "Airport Matching" at the close of the fiscal year 1975-76
10 is hereby reappropriated for expenditure during fiscal year
11 1976-77.

99—West Virginia Nonintoxicating Beer Commission

Acct. No. 490

1	Personal Services	\$	240,000
2	Current Expenses		74,350
3	Equipment		3,000
4	Total	\$	317,350

100—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$ 334,825
2	Current Expenses	47,291
3	Repairs and Alterations	—0—
4	Equipment	2,000
5	Total	\$ 384,116

AGRICULTURE

101—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner	\$ 28,750
2	Other Personal Services	1,250,000
3	Current Expenses	640,215
4	Equipment	22,495
5	Marijuana and Multiflora Rose	
6	Eradication Program	37,000
7	Total	\$ 1,978,460

8 Out of the above funds a sum may be used to match
 9 federal funds for the eradication and control of pest and
 10 plant diseases.

11 Any unexpended balance remaining in the appropriation
 12 for "Marijuana and Multiflora Rose Eradication Program"
 13 at the close of the fiscal year 1975-76, is hereby reappropriated
 14 for expenditure during the fiscal year 1976-77.

102—*Department of Agriculture—
Soil Conservation Committee*

Acct. No. 512

1	Personal Services	\$ 222,000
2	Current Expenses	68,440

3	Watershed Program	200,000
4	Mud River Flood Control Project	50,000
5	Total	\$ 540,440

6 Any unexpended balance remaining in the appropriations
7 for "Watershed Program," "Mud River Flood Control Project"
8 and "Channelization of Kelley's Creek" at the close of the
9 fiscal year 1975-76 is hereby reappropriated for expenditure
10 during fiscal year 1976-77.

103—*Department of Agriculture—Division of Rural Resources*
(Matching Fund)

Acct. No. 513

1	Personal Services	\$ 455,818
2	Current Expenses	105,182
3	Total	\$ 561,000

4 Any part or all of this appropriation may be transferred to
5 Special Revenue Fund for the purpose of matching Federal
6 Funds for the above-named program.

104—*Department of Agriculture—Meat Inspection*

Acct. No. 514

1	Unclassified	\$ 383,000
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2 Any part or all of this appropriation may be transferred to
3 Special Revenue Fund for the purpose of matching Federal
4 Funds for the above-named program.

5 Any unexpended balance remaining in the appropriation
6 for "Meat Inspection" at the close of the fiscal year 1975-76
7 is hereby reappropriated for expenditure during the fiscal
8 year 1976-77.

105—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

1	Agricultural Awards	\$ 66,000
2	West Virginia State Fair	25,000
3	Black Walnut Festival	4,000
4	Apple Festival	2,000
5	Strawberry Festival	5,450
6	Buckwheat Festival	4,000
7	Marshall Fair	3,000
8	Town and Country Days	3,000
9	Potato Festival	2,000
10	Webster Logging Festival	2,500
11	Paden City Labor Day Festival	2,500
12	Jackson County Junior Fair	2,000
13	Tyler County Fair	3,000
14	Wyoming County Labor Day Festival	
15	(4-H awards)	3,000
16	Lincoln County Tomato Festival	1,500
17	Clay County Golden Delicious Festival	2,000
18	West Virginia Sports Festival	2,000
19	Wood County Fair	3,500
20	Braxton Fair Association	2,500
21	Virginia Point Days (Wayne County)	2,000
22	Monroe County Farmer's Day (Union)	2,000
23	Huntington River Day Fair	1,500
24	Pocahontas County Pioneer Days	1,500
25	Mannington District Fair	1,500
26	Paw Paw District Fair	1,500
27	Winfield District Fair	1,500
28	Putnam County Midway Fair	1,500
29	Mason County Fair	4,000
30	Total	\$ 155,950

CONSERVATION AND DEVELOPMENT

106—*Geological and Economic Survey Commission*

Acct. No. 520

1	Personal Services	\$ 500,000
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2	Current Expenses	194,214
3	Repairs and Alterations	10,450
4	Equipment	56,673
5	Cooperative Mapping Program	240,000
6	Coal Quality and Reserve Study	293,000
7	Archaeological Investigations	30,000

8 Total\$ 1,324,337

9 Of the above appropriation for Cooperative Mapping Pro-
 10 gram, the sum of \$65,000 may be used to cooperate with the
 11 United States Geological Survey in Ground Waters Resources
 12 Study.

107—*West Virginia Commission on Energy,
 Economy and Environment*

Acct. No. 562

1 Total\$ —0—

108—*Department of Natural Resources*

Acct. No. 565

1	Personal Services	\$ 4,125,000
2	Current Expenses	1,049,168
3	Repairs and Alterations	339,218
4	Equipment	414,190
5	Division of Law Enforcement	—0—
6	Clarke-McNary Fire Prevention	400,000
7	Debt Service	975,000
8	A.R.A.-E.D.A. Parks Program	108,000
9	Water Resources Board	15,000
10	Special Works Program	312,000
11	Berkeley Springs State Park	135,000
12	Reclamation Board of Review	15,000
13	U. S. Geological Survey	52,500
14	Coal Refuse Disposal and Dam Control Act	222,000
15	Rabies Control	37,500
16	French Creek Game Farm	97,000
17	Wonderful West Virginia (Publication)	150,000

18	Pipestem State Park	475,000
19	Family Recreation on Public Fishing and	
20	Hunting Areas	—0—
21	Subsistence for Conservation Officers	342,188
22	Repairs and Replacement of Equipment and	
23	Furnishings at State Parks and Forests	—0—
24	Implementation of Federal Sewage Grant	
25	Program	—0—
26	Canaan Valley State Park	—0—
27	New River Scenic Railroad State Park	—0—
28	Beech Fork, Grave Creek Mound and Sand-	
29	stone Falls State Park	—0—
30	Hawks Nest State Park	—0—
31	Cass Scenic Railroad	—0—
32	Abandoned Coal Refuse Disposal Pile	
33	Reclamation	—0—
34	West Virginia Heritage Trust Program	—0—
35	Total	\$ 9,263,764

36 Any unexpended balance remaining in the appropriations for
 37 "Panther State Forest," "Piney Creek Watershed," "Purchase
 38 of Land—Pipestem State Park," "Land Purchase and Up-
 39 grading Facilities—Laurel Creek," "Bluestone State Park,"
 40 "Tomlinson Run State Park," "Pleasant Creek Rifle Range,"
 41 "French Creek Game Farm" at the close of the fiscal year
 42 1975-76, is hereby reappropriated for expenditure during
 43 the fiscal year 1976-77.

44 Any or all funds appropriated for "Clarke-McNary Fire
 45 Prevention" may be transferred to a Special Revenue fund to
 46 match and aid Federal Funds.

47 Out of the above appropriation for Subsistence for Con-
 48 servation Officers, subsistence shall be paid at the rate of
 49 two hundred twenty-eight dollars (\$228.00) per month to
 50 the chief conservation officer and each full-time uniformed
 51 conservation officer, under his direct supervision, whose pri-
 52 mary duties and responsibilities are law enforcement.

53 From the above appropriation "Subsistence for Conserva-
 54 tion Officers," there may be transferred to a Department of

55 Natural Resources Special Revenue Account as reimburse-
 56 ment for payment of subsistence to the chief conservation
 57 officer and each full-time uniformed conservation officer,
 58 under his direct supervision, whose primary duties and
 59 responsibilities are law enforcement, an amount not to exceed
 60 two hundred twenty-eight dollars (\$228.00) per month.

109—*Public Land Corporation*

Acct. No. 566

1 Any unexpended balance remaining in the appropriations
 2 for "Public Land Corporation," "Blennerhassett Island," and
 3 "National Track and Field Hall of Fame" at the close of the
 4 fiscal year 1975-76, is hereby reappropriated for expenditure
 5 during the fiscal year 1976-77.

110—*Water Development Authority*

Acct. No. 567

1	Personal Services	\$	70,000
2	Operating Expenses		70,000
3	Capital Outlay		3,000,000
			<hr/>
4	Total	\$	3,140,000

5 Any unexpended balance remaining in the appropriation for
 6 "Capital Outlay" at the close of the fiscal year 1975-76, is
 7 hereby reappropriated for expenditure during the fiscal year
 8 1976-77.

111—*West Virginia Railroad Maintenance Authority*

Acct. No. 569

1	Total	\$	100,000
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PROTECTION

112—*Department of Public Safety*

Acct. No. 570

1	Personal Services	\$	7,197,039
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2	Current Expenses	2,781,723
3	Repairs and Alterations	163,500
4	Equipment	1,160,000
5	Emergency Fund	5,000
6	Arrest and Witness Fee	225,000
7	Total	\$ 11,532,262

113—*Adjutant General—State Militia*

Acct. No. 580

1	Personal Services	\$ 160,000
2	Current Expenses	324,400
3	Repairs and Alterations	36,000
4	Equipment	7,700
5	Compensation of Commanding Officers, Clerical	
6	Allowances and Uniform Allowances	95,360
7	Property Maintenance	365,200
8	State Armory Board	1,325,000
9	Total	\$ 2,313,660

MISCELLANEOUS BOARDS AND COMMISSIONS

114—*West Virginia State Board of Land Surveyors*

Acct. No. 585

1	To pay the per diem of members and other	
2	general expenses	\$ 8,000
3	From Collections	8,000

115—*State Board of Professional Foresters*

Acct. No. 586

1	To pay the per diem of members and other	
2	general expenses	\$ 800
3	From Collections	800

116—*West Virginia Board of Examiners for Practical Nurses*

Acct. No. 587

1	To pay the per diem of members and other	
2	general expenses	\$ 60,000
3	From Collections	60,000

117—*State Board of Chiropractic Examiners*

Acct. No. 588

1	To pay the per diem of members and other		
2	general expenses	\$	1,800
3	From Collections		1,800

118—*State Board of Pharmacy*

Acct. No. 590

1	To pay the per diem of members and other		
2	general expenses	\$	62,000
3	From Collections		62,000

119—*State Board of Osteopathy*

Acct. No. 591

1	To pay the per diem of members and other		
2	general expenses	\$	6,000
3	From Collections		6,000

120—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

1	To pay the per diem of members and other		
2	general expenses	\$	30,000
3	From Collections		30,000

121—*State Board of Registration for Professional Engineers*

Acct. No. 594

1	To pay the per diem of members and other		
2	general expenses	\$	58,000
3	From Collections		58,000

122—*State Board of Architects*

Acct. No. 595

1	To pay the per diem of members and other		
2	general expenses	\$	14,000
3	From Collections		14,000

123—*State Veterinary Board*

Acct. No. 596

1	To pay the per diem of members and other		
2	general expenses	\$	2,000
3	From Collections	-	2,000

124—*Human Rights Commission*

Acct. No. 598

1	Personal Services	\$	222,000
2	Current Expenses		127,000
3	Equipment	-	10,000
4	Total	\$	359,000

125—*West Virginia State Board of Sanitarians*

Acct. No. 599

1	To pay the per diem of members and other		
2	general expenses	\$	800
3	From Collections		800

126—*West Virginia Public Employees Retirement Board*

Acct. No. 614

1	Employers Accumulation Fund	\$	8,000,000
2	Expense Fund		100,000
3	Total	\$	8,100,000

4 The above appropriation is intended to cover the state's
 5 share of West Virginia Public Employee's Retirement
 6 coverage for those departments operating from General Reve-
 7 nue Fund and State Road Fund appropriations. Workmen's
 8 Compensation Commission, Public Service Commission, and
 9 other departments operating from Special Revenue Funds
 10 and/or Federal Funds shall pay their proportionate share of
 11 the retirement costs for their respective divisions. When speci-
 12 fic appropriations are not made such payments may be made

- 13 from the balance in the various Special Revenue Funds in
14 excess of specific appropriations.

127—*West Virginia Public Employees Insurance Board*

Acct. No. 615

1	Expense Fund	\$ 113,000
2	Public Employees Health Insurance—	
3	State Contribution	14,000,000
4	Total	\$ 14,113,000

- 5 The above appropriation is intended to cover the state's
6 share of Public Employees Health Insurance costs for those
7 spending units operating from General Revenue Fund. The
8 State Department of Highways, Department of Motor Ve-
9 hicles, Workmen's Compensation Commission, Public Service
10 Commission, and other departments operating from Special
11 Revenue Fund and/or Federal Funds shall pay their pro-
12 portionate share of the Public Employees Health Insurance
13 cost for their respective divisions. When specific appropria-
14 tions are not made such payments may be made from the
15 balances in the various Special Revenue Funds in excess of
16 specific appropriations.

128—*Insurance Commissioner*

Acct. No. 616

1	Personal Services	\$ 308,477
2	Current Expenses	83,000
3	Repairs and Alterations	3,500
4	Equipment	3,500
5	Total	\$ 398,477

- 1 **Sec. 2. Appropriations from Other Funds.**—From the funds
2 designated there is hereby appropriated conditionally upon
3 the fulfillment of the provisions set forth in Chapter 5A,
4 Article 2 of the Code of West Virginia the following amounts,
5 as itemized, for expenditure during the fiscal year one
6 thousand nine hundred seventy-seven.

129—*State Department of Highways*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1	Expressway, Trunkline and Feeder	\$ 39,027,847
2	State Local Services	34,000,000
3	Inventory Revolving	1,000,000
4	Equipment Revolving	2,000,000
5	General Operations	18,000,000
6	Debt Service	69,880,000
7	Construction from Tax Funds	—0—
8	Other Operations	—0—
9	Total	\$163,907,847

10 It is the intent to appropriate and make available for
 11 expenditure, the balances and all revenues and income of the
 12 state road fund, including the proceeds from the sale of
 13 bonds, for the maintenance, construction and reconstruction
 14 of state roads and for other purposes in accordance with the
 15 provisions of Chapter 17, Code of West Virginia, one thousand
 16 nine hundred thirty-one, as amended.

17 The State Commissioner of Highways shall have the au-
 18 thority to operate revolving funds within the state road fund
 19 for the operation and purchase of various types of equipment
 20 used directly and indirectly in the construction and mainten-
 21 ance of roads and for the purchase of inventories and materials
 22 and supplies.

23 There is hereby appropriated, within the above items suf-
 24 ficient moneys for the payment of claims, accrued or arising
 25 during this budgetary period, to be paid in accordance with
 26 Chapter 14, Article 2, Sections 17 and 18, Code of West
 27 Virginia, one thousand nine hundred thirty-one, as amended.

130—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 1,240,750
2	Current Expenses	1,428,698

3	Equipment	35,000
4	Purchase of License Plates	625,000
5	Social Security Matching	73,370
6	Public Employees Retirement Matching	118,000
7	Public Employees Health Insurance	56,000
8	Total	\$ 3,576,818

131—*State Tax Department—Gasoline Tax Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 360,000
2	Current Expenses	133,665
3	Equipment	4,800
4	Social Security Matching	25,000
5	Public Employees Retirement Matching	37,000
6	Public Employees Health Insurance	14,300
7	Total	\$ 574,765

132—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 135,879
2	Other Expenses	47,400
3	Total	\$ 183,279

4 Expenditures from this appropriation shall not exceed the
5 amount to be reimbursed by the Federal Government.

6 Federal funds in excess of the amounts hereby appropriated
7 may be made available by budget amendment upon request
8 of the State Superintendent of Schools and approval of the
9 Governor for any emergency which might arise in the op-
10 eration of this division during the fiscal year.

133—*Treasurer's Office*

Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

1	Abandoned and Unclaimed Property—Trust	
2	and Expenses Fund	\$ 34,300

134—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 81,797
2	Current Expenses	26,000
3	Equipment	1,050
4	Social Security Matching	5,500
5	Public Employees Retirement Matching	7,000
6	Public Employees Health Insurance	2,600

7	Total	\$ 123,947
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8 The total amount of this appropriation shall be paid out of
 9 collections of license fees as provided by law.

135—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses	\$ 5,000
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2 The total amount of this appropriation shall be paid from
 3 Special Revenue Fund out of collections of license fees and
 4 fines as provided by law.

5 No expenditures shall be made from this account except
 6 for hospitalization, medical care, and/or funeral expenses for
 7 persons contributing to this fund.

136—*Auditor's Office—Land Department Operating Fund*

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total	\$ 12,000
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- 2 The total amount of this appropriation shall be paid from
3 Special Revenue Fund out of fees and collections as pro-
4 vided by law.

137—*Department of Finance and Administration—
Division of Purchases—Revolving Fund*

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 280,000
2	Current Expenses	15,130
3	Equipment	6,500
4	Social Security Matching	15,500
5	Public Employees Retirement Matching	27,000
6	Public Employees Health Insurance	13,170
7	Total	\$ 357,300

- 8 The total amount of this appropriation shall be paid from
9 Special Revenue Fund as provided by Chapter 5A, Article 2
10 of the Code of West Virginia.

- 11 The above appropriation includes salaries and operating
12 expenses.

- 13 There is hereby appropriated from this fund, in addition
14 to the above appropriation, the necessary amount for the
15 purchase of supplies for resale.

138—*Department of Finance and Administration—
Information System Services Division Fund*

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 2,320,000
2	Current Expenses	2,855,700
3	Equipment	100,600
4	Social Security Matching	168,900
5	Public Employees Retirement Matching	217,000
6	Public Employees Health Insurance	102,000
7	Total	\$ 5,764,200

8 The total amount of this appropriation shall be paid from
 9 Special Revenue Fund out of collections made by the Depart-
 10 ment of Finance and Administration as provided by law.

139—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	290,000
2	Current Expenses		36,920
3	Equipment		12,000
4	Social Security Matching		15,000
5	Public Employees Retirement Matching		27,000
6	Public Employees Health Insurance		11,000
7	Total	\$	391,920

8 The total amount of this appropriation shall be paid from
 9 Special Revenue Fund out of collections made by the Depart-
 10 ment of Agriculture as provided by law.

140—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	98,000
2	Current Expenses		47,895
3	Equipment		1,200
4	Social Security Matching		5,400
5	Public Employees Retirement Matching		8,446
6	Public Employees Health Insurance		5,240
7	Total	\$	166,181

8 The total amount of this appropriation shall be paid from
 9 Special Revenue Fund out of collections made by the State
 10 Committee of Barbers and Beauticians as provided by law.

141—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	60,000
2	Other Personal Services		1,214,205
3	Current Expenses		476,800
4	Equipment		32,905
5	Social Security Matching		62,575
6	Public Employees Retirement Matching		115,000
7	Public Employees Health Insurance		55,625
8	Total	\$	2,017,110
9	The total amount of this appropriation shall be paid from		
10	Special Revenue Fund out of collections for special license		
11	fees from public service corporations as provided by law.		
12	Out of the above appropriation \$5,000 may be transferred		
13	to the State Water Resources Commission of the Department		
14	of Natural Resources for use in cooperation with the U. S.		
15	Geological Survey in a program of stream gauging.		

142—*Public Service Commission—Gas Pipeline Division*

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	97,100
2	Current Expenses		46,730
3	Equipment		3,500
4	Social Security Matching		4,600
5	Public Employees Retirement Matching		9,260
6	Public Employees Health Insurance		3,600
7	Total	\$	164,790
8	The total amount of this appropriation shall be paid from		
9	Special Revenue Fund out of receipts collected for or by the		
10	Public Service Commission pursuant to and in the exercise		
11	of regulatory authority over pipeline companies.		

143—*Public Service Commission—Motor Carrier Division*

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 565,348
2	Current Expenses	225,443
3	Equipment	5,060
4	Social Security Matching	32,560
5	Public Employees Retirement Matching	52,920
6	Public Employees Health Insurance	27,180
7	Total	\$ 908,511

8 The total amount of this appropriation shall be paid from
 9 Special Revenue Fund out of receipts collected for or by the
 10 Public Service Commission pursuant to and in the exercise
 11 of regulatory authority over motor carriers as authorized by
 12 law.

144—*Department of Natural Resources*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 2,240,000
2	Current Expenses	740,870
3	Repairs and Alterations	146,000
4	Equipment	234,215
5	Social Security Matching	145,000
6	Public Employees Retirement Matching	225,000
7	Public Employees Health Insurance	130,000
8	Land Purchase and Buildings	350,000
9	Personal Services—Additional Salary for Con-	
10	servation Officers	—0—
11	Total	\$ 4,211,085

12 The total amount of this appropriation shall be paid from
 13 Special Revenue Fund out of fees collected by the Depart-
 14 ment of Natural Resources. Expenditures shall be limited to
 15 the amounts appropriated except for federal funds received
 16 and special funds collected at state parks.

145—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 242,270
2	Current Expenses	124,362
3	Repairs and Alterations	8,700
4	Equipment	22,500
5	Social Security Matching	2,000
6	Public Employees Health Insurance	12,000
7	Total	\$ 411,832

8 The total amount of this appropriation shall be paid from
 9 Special Revenue Fund out of fees collected for inspection
 10 stickers as provided by law.

146—*West Virginia Civil Service System*

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 480,000
2	Current Expenses	242,560
3	Social Security Matching	36,160
4	Public Employees Retirement Matching	45,000
5	Public Employees Health Insurance	18,000
6	Total ...	\$ 821,720

7 The total amount of this appropriation shall be paid from
 8 Special Revenue Fund supported by participating agencies as
 9 provided by law.

147—*Board of Regents—West Virginia University—
Special Capital Improvement Fund*

Acct. No. 883

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ 543,143
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2 The total amount of this appropriation shall be paid from

3 the nonrevolving Capital Improvement Fund created by the
4 1959 Legislature, as amended.

5 Any unexpended balances remaining in the appropriations
6 for "Miscellaneous Small Projects, Creative Arts, Utilities,
7 Roads and Parking, and Medical Center—Repairs and Altera-
8 tions" at the close of the fiscal year 1975-76 are hereby reap-
9 propriated for expenditure during fiscal year 1976-77.

148—*Board of Regents—State System Special
Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)*

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service and Debt Service Reserve	\$ 2,032,698
2	Miscellaneous Projects	950,000
3	Glenville State College, Campus Development ---	125,000
4	(Complete track and field facilities)	
5	Parkersburg Community College, Campus	
6	Development	100,000
7	(Planning for additional educational facili-	
8	ties)	
9	West Virginia Institute of Technology, Campus	
10	Development	130,000
11	(Construct mining engineering technology	
12	laboratory building and property acquisition)	
13	Potomac State College of WVU, Campus De-	
14	velopment	150,000
15	(Agriculture and machinery technology	
16	building addition and renovation)	
17	Potomac State College—Air	
18	Conditioner—Library Building	50,000
19	Fairmont State College, Campus Development ..	454,500
20	(Construct new maintenance building—ware-	
21	house; plan Colebank Gymnasium renovation)	
22	Bluefield State College, Campus Development..	150,000
23	(New parking area, lights, etc.)	
24	Marshall University, Campus Development	4,000,000

25	(Construct academic building B; Gullickson	
26	Hall air-conditioning and renovation)	
27	West Virginia University, Campus Development	2,586,000
28	(Central receiving and warehousing facility,	
29	pedestrian overpass on Maiden Lane, walks	
30	to serve traffic using PRT station, light tennis	
31	courts at Coliseum, and property acquisition)	
32	Southern West Virginia Community College,	
33	Campus Development	3,000,000
34	(Construct new academic building and site	
35	improvements—Logan)	
36	West Virginia State College, Campus	
37	Development	773,000
38	(Planning, construction and renovation of	
39	educational facilities)	

40 The above projects are listed in a stated order of priority.
 41 Projects are to be paid on a cash basis and made available
 42 from date of passage. It is intended that only complete and
 43 usable projects be constructed and then only in the listed order
 44 of priority: *Provided, however,* That whenever the amount in
 45 the special capital improvement fund shall be sufficient to
 46 cover all capital expenditures authorized above, then the
 47 listed projects shall be considered of equal priority and all of
 48 them, or any one or more, may be undertaken as soon as
 49 plans can be prepared and contracts let therefor.

50 The total amount of this appropriation shall be paid from
 51 the Special Capital Improvement Fund created by the 1971
 52 Legislature.

53 Any unexpended balances remaining in prior years and in
 54 the 1975-76 appropriation are hereby reappropriated for ex-
 55 penditure during fiscal year 1976-77.

149—*Board of Regents—Special Capital Improvement Fund*

Acct. No. 884

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service\$ 1,682,015

2 The total amount of this appropriation shall be paid from

3 the nonrevolving Capital Improvement Fund created by the
4 1959 Legislature, as amended.

5 Any unexpended balances remaining in prior years and
6 1975-76 appropriations are hereby reappropriated for ex-
7 penditure during fiscal year 1976-77.

150—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$ 2,200,000
2	Current Expenses	1,287,990
3	Equipment	50,000
4	Social Security Matching	124,000
5	Public Employees Retirement Matching	205,000
6	Public Employees Health Insurance	92,300
7	Total	\$ 3,959,290

8 There is hereby authorized to be paid out of the above
9 appropriation for Current Expenses the amount necessary for
10 premiums on bonds given by the State Treasurer as Bond
11 Custodian for the protection of the Workmen's Compensa-
12 tion Fund. This sum shall be transferred to the Board of
13 Insurance.

151—*West Virginia Alcohol Beverage Control Commissioner*

Acct. No. 927

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner	\$ 25,000
2	Other Personal Services	6,532,000
3	Current Expenses	2,786,200
4	Repairs and Alterations	48,000
5	Equipment	63,000
6	Social Security Matching	361,017
7	Agency Operating Expense	11,000
8	Public Employees Retirement Matching	590,000

9	Public Employees Health Insurance	372,000
10	Total	\$ 10,788,217
11	The total amount of this appropriation shall be paid from	
12	Special Revenue Fund out of liquor revenues.	
13	The above appropriation includes the salaries of store per-	
14	sonnel, store inspectors, store operating expenses and equip-	
15	ment; and salaries, expenses and equipment of administration	
16	offices.	
17	There is hereby appropriated from liquor revenues, in	
18	addition to the above appropriation, the necessary amount	
19	for the purchase of liquor, as provided by law.	

152—*West Virginia University—Medical School*

Acct. No. 928

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services	\$ 23,601,667
2	Current Expenses	11,642,834
3	Repairs and Alterations	1,051,386
4	Equipment	1,686,857
5	Intern and Residency Support Program for	
6	Community Hospitals	675,000
7	Family Practice Residency Support Program ..	300,000
8	Total	\$ 38,957,744

1 **Sec. 3. Supplemental and Deficiency Appropriations.**—From
 2 the State Fund, General Revenue, except as otherwise pro-
 3 vided, there are hereby appropriated the following amounts
 4 as itemized, for expenditure during the fiscal year one
 5 thousand nine hundred seventy-six to supplement the 1975-
 6 76 appropriations, and to be available for expenditure upon
 7 date of passage.

153—*Commissioner of Public Institutions*

Acct. No. 190

1	Current Expenses	\$ 40,000
2	Prison Industries	100,000
3	Total	\$ 140,000

154—*Secretary of State*

Acct. No. 250

1	Current Expenses	\$ 12,000
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155—*Department of Education—School Lunch Program*

Acct. No. 287

1	Aid to Counties—includes hot lunches and can-	
2	ning for hot lunches	\$ 188,850

156—*West Virginia Schools for the Deaf and the Blind*

Acct. No. 333

1	Personal Services	\$ 51,100
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157—*Forestry Camp for Boys No. 1 (Davis)*

Acct. No. 371

1	Current Expenses	\$ 26,000
2	Repairs and Alterations	5,000
3	Total	\$ 31,000

158—*West Virginia State Prison for Women*

Acct. No. 374

1	Current Expenses	\$ 35,000
2	Repairs and Alterations	5,000
3	Total	\$ 40,000

159—*West Virginia Penitentiary*

Acct. No. 375

1	Current Expenses	\$ 84,000
2	Repairs and Alterations	10,000
3	Equipment	15,000
4	To Install Glass Block Windows	30,000
5	Boiler Installation	250,000
6	Total	\$ 389,000

160—*Huttonsville Correctional Center*

Acct. No. 376

1	Current Expenses	\$ 160,000
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161— <i>West Virginia Children's Home</i>		
Acct. No. 380		
1	Current Expenses	\$ 20,000
162— <i>Andrew S. Rowan Memorial Home</i>		
Acct. No. 384		
1	Current Expenses	\$ 40,000
163— <i>Department of Veterans Affairs</i>		
Acct. No. 404		
1	Current Expenses	\$ 22,100
164— <i>Colin Anderson Center</i>		
Acct. No. 419		
1	Current Expenses	\$ 70,000
164-a— <i>Fairmont Emergency Hospital</i>		
Acct. No. 425		
1	Current Expenses	\$ 5,000
164-b— <i>Denmar State Hospital</i>		
Acct. No. 432		
1	Current Expenses	\$ 25,000
165— <i>Department of Mines</i>		
Acct. No. 460		
1	Current Expenses	\$ 45,000
166— <i>Department of Natural Resources</i>		
Acct. No. 565		
1	Current Expenses	\$ 150,000
2	Debt Service	290,000
3	Clarke-McNary, Fire Prevention and Control ..	150,000
4	Berwind Lake Public Hunting and	
5	Fishing Area	300,000
6	Total	\$ 890,000
7	The above appropriation for "Berwind Lake Public Hunting	
8	and Fishing Area" is for campsites (to include water, sewage	
9	and electric); boat dock and launching ramp (to include pur-	
10	chase of a small number of boats for rental purposes); parking	
11	area to accommodate boat dock and launching area (contingent	
12	upon availability of suitable land); combination office storage	
13	building; and land purchase to expand present recreation area.	

167—*Adjutant General*

Acct. No. 580

1	Current Expenses	\$	10,000
2	Equipment		4,000
3	Total	\$	14,000

168—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Current Expenses	\$	130,000
2	License Plates		200,000
3	Total	\$	330,000

169—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Current Expenses	\$	200,000
2	Public Employees Health Insurance		24,000
3	Total	\$	224,000

170—*Alcohol Beverage Control Commissioner*

Acct. No. 927

1	Public Employees Health Insurance	\$	67,000
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1 **Sec. 4. Appropriations from Surplus Revenue.**—The follow-
 2 ing items are appropriated from the General Revenue Fund,
 3 subject to the following terms and conditions:

4 (a) The following items are hereby appropriated and are
 5 to be available for expenditure out of the surplus in the
 6 Treasury, subject to the approval of the Governor.

7 (b) The Governor shall review the revenues of the State
 8 from the date that appropriations hereunder are expected to
 9 be made available for expenditure, and determine whether,
 10 in his opinion, revenues then in prospect or on hand will be
 11 sufficient to meet all appropriations under the 1975 Budget
 12 Act, and this section, and make a finding with respect thereof.
 13 In the event that such finding shall show sufficient revenues

14 on hand or in prospect to meet all other appropriations and
15 reappropriations made by the 1975 Budget Act and subject
16 to the foregoing conditions, any or all of the following items
17 may be released for expenditure by the Governor from the
18 date of passage of this bill and such appropriations shall remain
19 in full force and effect until June 30, 1977.

20 In the event that surplus revenues as of June 30, 1976
21 are not sufficient to meet all appropriations made by this
22 section, then the appropriations shall be available, in priority
23 order only to the extent of the total actual surplus accrued
24 as of June 30, 1976.

Item I. *West Virginia Water Development Authority*

1	Waste water Collection and Treatment System,	
2	Grants & Loans	\$ 1,800,000

Item II. *Department of Commerce*

1	A. John Brown Theater Production	\$ 55,000
2	B. Honey in the Rock	55,000
3	C. Theatre Arts of West Virginia	120,000
4	Total	\$ 230,000

Item III. *Department of Natural Resources*

1	A. Coopers Rock State Park	\$ 100,000
2	B. Hawks Nest State Park	121,000
3	C. Cedar Creek State Park	100,000
4	D. Matoaka State Park	15,000
5	Total	\$ 336,000

Item IV. *Department of Mental Health*

1	A. Logan-Mingo Community Mental	
2	Health Center	\$ 480,000

1 **Sec. 5. Awards for Claims Against the State.**—From the
2 funds designated there are hereby appropriated for the re-
3 mainder of the fiscal year 1975-76 and to remain in effect
4 until June 30, 1977, for payment of claims against the state,
5 the following amounts as itemized:

6 (a) Claims against the nonintoxicating beer

7	commission: (To be paid from General	
8	Revenue Fund)	
9	(1) The F. & M. Schaefer Brewing	
10	Company	\$ 24,474.67
11	(2) The Queen City Brewing Co.	\$ 8,974.82
12	(b) Claims against the department of finance	
13	and administration: (To be paid from	
14	General Revenue Fund)	
15	(1) Ronald L. Cook	\$ 4,375.00
16	(c) Claims against the department of natural	
17	resources: (To be paid from General	
18	Revenue Fund)	
19	(1) Larry James	\$ 1,500.00
20	(d) Claims against the department of mental	
21	health: (To be paid from General	
22	Revenue Fund)	
23	(1) James R. Clowser	\$ 1,020.00
24	(2) Tabitha V. Partlow	\$ 57.68
25	(3) Inland Mutual Insurance Company,	
26	subrogee of Tabitha V. Partlow	\$ 342.83
27	(4) J. Wilbur Swisher and Alice V. Swisher	
28	d/b/a Swisher's Feed and Supply	
29	Company	\$ 2,580.76
30	(5) Jordan, McGettigan & Yule	\$ 5,942.20
31	(6) Pfizer, Inc.	\$ 473.23
32	(7) American Can Company	\$ 1,125.85
33	(8) Parke, Davis & Company	\$ 545.96
34	(e) Claims against the department of public	
35	institutions: (To be paid from General	
36	Revenue Fund)	
37	(1) J. J. Englert Company	\$ 5,834.40
38	(2) Shen K. Wang, M.D.	\$ 15,300.00
39	(3) Physicians Fee Office	\$ 111.92
40	(4) Xerox Corporation	\$ 1,166.18
41	(5) Ashland Chemical Company	\$ 249.65
42	(6) Valley Welding Supply Company	\$ 25.70
43	(f) Claims against the state auditor: (To be	
44	paid from General Revenue Fund)	

45	(1) Archie Day, Sheriff	\$ 18.00
46	(2) D. A. Wright, Sheriff	\$ 762.00
47	(3) Russell E. Duvernoy &	
48	Henry Todd Duvernoy	\$ 775.00
49	(4) Frank A. Rocchio, Sheriff	\$ 16.00
50	(g) Claims against the department of com-	
51	merce: (To be paid from General	
52	Revenue Fund)	
53	(1) Ski South Magazine	\$ 679.50
54	(h) Claims against the department of public	
55	safety: (To be paid from General	
56	Revenue Fund)	
57	(1) Associated Dry Goods d/b/a	
58	The Diamond Department Store	\$ 441.96
59	(i) Claims against the board of vocational	
60	rehabilitation, division of vocational	
61	rehabilitation: (To be paid from	
62	General Revenue Fund)	
63	(1) Richard D. Kitching, M.D.	\$ 405.00
64	(2) Charleston Area Medical Center, Inc.	\$ 2,972.37
65	(j) Claims against the department of highways:	
66	(To be paid from State Road Fund)	
67	(1) Mrs. Samuel Kelly	\$ 58.00
68	(2) The Chesapeake and Potomac Tele-	
69	phone Company of West Virginia	\$ 3,856.86
70	(3) Daniel Crockett	\$ 257.96
71	(4) Larry W. Lohan and Pamela Lohan	\$ 38.37
72	(5) Robert Douglas Baker	\$ 35.00
73	(6) Mark A. Melrose, Executor of the	
74	Estate of J. J. Melrose, deceased, and	
75	Frank R. Melrose	\$ 3,000.00
76	(7) Bobby Shafer	\$ 305.85
77	(8) Ryan, Incorporated of Wisconsin	\$ 40,000.00
78	(9) Kenneth E. Plants	\$ 14,500.00
79	(10) Gerald E. Tinsley	\$ 163.10
80	(11) Robert L. Jefferson	\$ 100.00
81	(12) Wanda M. Gannon	\$ 3,450.00
82	(13) Thomas Edison Hale	\$ 8,250.00

83	(14) Larry Lee Wingate	\$ 11,000.00
84	(15) Everett L. Dunbrack	\$ 200.00
85	(16) Ronald E. Ferguson	\$ 210.73
86	(17) Travelers Insurance Co., subrogee of	
87	William R. Beckner	\$ 78.28
88	(18) Prudential Property & Casualty	
89	Insurance Co., subrogee of	
90	Beverly J. Maxwell	\$ 194.67
91	(19) Randy Cooper	\$ 71.44
92	(20) State Farm Mutual Automobile	
93	Insurance Co., subrogee of	
94	Thelma Criner	\$ 195.70
95	(21) Maryland Casualty Co., subrogee of	
96	Michael E. Heitz	\$ 134.88
97	(22) Michael E. Heitz	\$ 100.00
98	(23) Westfield Insurance Co., subrogee of	
99	David Sago	\$ 106.02
100	(24) Buckeye Union Insurance Co., subrogee	
101	of Raymond L. Maddy	\$ 207.93
102	(25) Kenneth S. Kayser	\$ 100.00
103	(26) Clyde Speer and Mildred Speer	\$ 328.60
104	(27) Patricia G. McFann	\$ 61.14
105	(28) Hershel Ray Wiley	\$ 300.00
106	(29) Paul G. Nohe & June D. Nohe	\$ 100.00
107	(30) Roy E. Brassfield, Jr.	\$ 69.21
108	(31) Helen Cremeans	\$ 391.45
109	(32) James E. White	\$ 43.26
110	(33) Carmie Riddle	\$ 87.55
111	(34) Motor Insurance Corp., subrogee of	
112	Quincy E. Holstein	\$ 228.00
113	(35) Fred H. Gregory	\$ 35.63
114	(36) Coal River Public Service District	\$ 201.00
115	(37) L. M. Casdorff	\$ 61.29
116	(38) Mr. & Mrs. T. E. Reed	\$ 600.00
117	(39) David R. Dietz	\$ 82.40
118	(40) Tygart Valley Telephone Company	\$ 109.79
119	(41) Dana H. Carney	\$ 67.61
120	(42) H. Ronald Harris	\$ 78.92
121	(43) T. A. Galyean, Jr., Ann T. Galyean, his	
122	wife, John G. Anderson, Trustee, and	

123	Huntington Federal Savings and		
124	Loan Association	\$	7,500.00
125	(44) Clarke W. Greene	\$	183.95
126	(45) James R. Lantz	\$	43.30
127	(46) Velva K. Corzine	\$	221.98
128	(47) Mrs. W. G. Via	\$	55.10
129	(48) Monongahela Power Company	\$	189.79
130	(49) Samuel Miller	\$	123.60
131	(50) Harry C. Henderson	\$	6,600.00
132	(51) Clyde M. Ellison	\$	25.00
133	(52) James M. Duffy	\$	25.00
134	(53) John L. Cooper	\$	25.00
135	(54) Norfolk & Western Railway Company ..	\$	1,258.29
136	(55) Opal Baker Thomas & Elsey Thomas ...	\$	1,920.00
137	(k) Claims against the rehabilitation environ-		
138	mental action program: (To be paid from		
139	special account in State Road Fund)		
140	(1) Lena Solomon	\$	500.00
141	(2) Edward H. Stanley	\$	200.00
142	(3) Geneva Maria Burch	\$	150.00
143	(l) Claims against the alcohol beverage control		
144	commissioner: (To be paid from Special		
145	Revenue Fund)		
146	(1) Maryland Casualty Co.	\$	2,500.00
147	(m) Claims against the workmen's compensa-		
148	tion fund: To be paid from Workmen's		
149	Compensation Fund)		
150	(1) Leonard Johnson Funeral Home, Inc. ..	\$	1,200.00
151	(n) Claims against the secretary of state: (To		
152	be paid from General Revenue Fund)		
153	(1) International Business Machines		
154	Corporation	\$	70.23
155	(o) Claims against the office of emergency		
156	services: (To be paid from General		
157	Revenue Fund)		
158	(1) Jay H. Cadle, d/b/a Cadle Sanitary		
159	Service	\$	10,492.50
160	(p) Claims against the department of motor		
161	vehicles: (To be paid from State Road		
162	Fund)		

163 (1) Mid-Mountain Mack, Inc. _____\$ 2,088.02

164 Total of all claims _____\$205,003.08

165 The Legislature finds that the above moral obligations and
166 the appropriations made in satisfaction thereof shall be the
167 full compensation for all claimants, and that prior to the
168 payments to any claimant provided for in this bill, the court
169 of claims shall receive a release from said claimant releasing
170 any and all claims for moral obligations arising from the
171 matters considered by the Legislature in the finding of the
172 moral obligations and the making of the appropriations of said
173 claimant. The court of claims shall deliver all releases obtained
174 from claimants to the department against which the claim was
175 allowed.

1 **Sec. 6. Reappropriations.**—Any unexpended balances of
2 Items I, II, V, VI, VII, VIII, IX, X, XI, XII, XIII and XIV
3 in the appropriations made by and under the authority of
4 Section 4 of the 1972 Budget Act, are hereby reappropriated
5 for expenditure during the fiscal year 1976-77.

6 Any unexpended balances of Items I, II, III, IV, V, VI,
7 VIII, IX, X, XI, XII, XIII, XIV, XV, XVI and XVII in
8 the appropriations made by and under the authority of Section
9 4 of the 1973 Budget Act, are hereby reappropriated for
10 expenditure during the fiscal year 1976-77.

1 **Sec. 7. Appropriations from Revenue Sharing Trust Fund.**
2 The following items are hereby appropriated from the Rev-
3 enue Sharing Trust Fund to be available for expenditure dur-
4 ing the fiscal year 1976-77.

171—*Revenue Sharing Trust Fund—
State Department of Highways*

Acct. No. 9705

1 Bridges and Access Roads _____\$ 7,755,377

172—*Revenue Sharing Trust Fund—
Department of Mental Health*

Acct. No. 9710

1	Weirton Area Mental Health Area	\$ 1,600,000
2	Fairmont-Morgantown Area	1,600,000
3	Keyser/Romney	1,600,000
4	Moundsville MR Center	800,000
5	Total	<u>\$ 5,600,000</u>

173—*Revenue Sharing Trust Fund—
Teachers Retirement Board*

Acct. No. 298

1	Teachers Retirement Fund	\$ 3,400,000
2	Employers Accumulation Fund	4,000,000
3	Total	<u>\$ 7,400,000</u>

174—*Revenue Sharing Trust Fund—
West Virginia Board of Regents (Control)*

Acct. No. 279

1	Educational Facility Development	
2	Medical Center—Charleston Division	\$ 1,185,000

175—*Revenue Sharing Trust Fund—
State Commission on Aging*

Acct. No. 406

1	Senior Citizens Centers	\$ 250,000
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176—*Revenue Sharing Trust Fund—
Department of Commerce*

Acct. No. 465

1	Methodist Historical Society—	
2	Old Rehobeth Church	\$ 100,000

177—*Revenue Sharing Trust Fund—
Department of Agriculture*

Acct. No. 510

1	Kanawha Farmers Market	\$ 200,000
2	Beckley Farmers Market	15,000

178—*Revenue Sharing Trust Fund—
Department of Agriculture—
Soil Conservation Committee*

Acct. No. 512

1 Coal River Rehabilitation Project\$ 50,000

179—*Revenue Sharing Trust Fund—
Department of Natural Resources*

Acct. No. 972

1	Grave Creek Mound State Park	\$ 1,300,000
2	Beech Fork State Park	1,600,000
3	Sandstone Falls State Park	25,000
4	Tomlinson Run State Park	1,000,000
5	Minden Railroad	162,000
6	Twin Falls State Park (9-hole golf course)	750,000
7	Cathedral State Park	15,000
8	Cacapon State Park—Golf Course	274,500

180—*Revenue Sharing Trust Fund—
State Auditor's Office*

Acct. No. 9775

1 Braxton County Memorial Hospital\$ 400,000

1 **Sec. 8. Reappropriations.—“Revenue Sharing Trust Fund”.**
2 —Any unexpended balances to the appropriations made by
3 and under Section 8, of the 1973 Budget Act and Supple-
4 mentary Acts to Chapter 10, Acts of the Legislature, Regular
5 Session 1973, under Section 5 of the 1974 Budget Act, and
6 Supplementary Acts to Chapter 11, Acts of the Legislature,
7 Regular Session 1975 are hereby reappropriated for expenditure
8 during the fiscal year 1976-77.

1 **Sec. 9. Special Revenue Appropriations.**—There is here-
2 by appropriated for expenditure during the fiscal year one
3 thousand nine hundred seventy-seven appropriations made by
4 general law from special revenue which are not paid into the
5 state fund as general revenue under the provisions of Chapter
6 12, Article 2, Section 2 of the Code of West Virginia, one

7 thousand nine hundred thirty-one: *Provided, however,* That
8 none of the moneys so appropriated by this section shall be
9 available for expenditure except in compliance with and in
10 conformity to the provisions of Chapter 12, Articles 2 and 3,
11 and Chapter 5A, Article 2 of the Code of West Virginia, un-
12 less the spending unit has filed with the state director of the
13 budget, the state auditor and the legislative auditor prior to
14 the beginning of each fiscal year:

15 (a) An estimate of the amount and sources of all revenues
16 accruing to such fund;

17 (b) A detailed expenditure schedule showing for what pur-
18 poses the fund is to be expended.

1 **Sec. 10. Specific Funds and Collection Accounts.**—A fund
2 or collection account, which by law is dedicated to a specific
3 use is hereby appropriated in sufficient amount to meet all
4 lawful demands upon the fund or collection account, and
5 shall be expended according to the provisions of Chapter
6 12, Article 3 of the Code of West Virginia.

1 **Sec. 11. Appropriation for Refunding Erroneous Payments.**
2 —Money that has been erroneously paid in to the state treasury
3 is hereby appropriated out of the fund into which it was paid
4 for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he
7 shall issue his requisition upon the auditor for the refunding
8 of the proper amount. The auditor shall issue his warrant
9 to the treasurer and the treasurer shall pay the warrant out of
10 the fund into which the amount was originally paid.

1 **Sec. 12. Sinking Fund Deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia Housing Development
5 Fund which is under the supervision and control of the state
6 sinking fund commission as provided by Chapter 31, Article
7 18, Section 20b of the West Virginia Code, 1931, as amended,
8 or in the funds of the state sinking fund commission because of
9 the failure of any state agency for either general obligation or

10 revenue bonds or any local taxing district for general obliga-
11 tion bonds to remit funds necessary for the payment of interest
12 and sinking fund requirements. The governor is authorized
13 to transfer from time to time such amounts to the state
14 sinking fund commission as may be necessary for these
15 purposes.

16 The state sinking fund commission shall reimburse the
17 State of West Virginia through the governor from the first
18 remittance collected from the West Virginia Housing Develop-
19 ment Fund or from any state agency or local taxing district
20 for which the governor advanced funds, with interest at the
21 rate carried by the bonds for the security or payment of which
22 the advance was made.

1 **Sec. 13. Appropriations from Taxes and License Fees.**

2 —There is hereby appropriated from the soft drink tax
3 revenues for administration and enforcement of the law
4 relating to said tax, a sum not to exceed two and one-half
5 percent of the total revenues collected. All such salaries
6 and expenses, authorized by law as aforesaid, shall be paid
7 by the tax commissioner through the state treasury out of
8 gross collections.

9 There is hereby appropriated from the cigarette tax revenues
10 for administration and enforcement of the law relating to
11 said tax, a sum not to exceed one and one-half percent of the
12 total revenues collected. All such salaries and expenses,
13 authorized by law as aforesaid, shall be paid by the tax
14 commissioner through the state treasury out of gross collec-
15 tions.

1 **Sec. 14. Appropriations to Pay Costs of Publication of**

2 **Delinquent Corporations.**—There is hereby appropriated out
3 of the state fund, general revenue, out of funds not otherwise
4 appropriated to be paid upon requisitions of the auditor and/or
5 the governor, as the case may be, a sum sufficient to pay the
6 cost of publication of delinquent corporations as provided by
7 Chapter 11, Article 12, Sections 84 and 86 of the Code of
8 West Virginia.

1 **Sec. 15. Appropriations for Local Governments.**—There is
2 hereby appropriated for payment to counties, districts, and

3 municipal corporations such amounts as will be necessary
4 to pay taxes due county, district and municipal corporations
5 and which have been paid into the treasury:

6 (a) For the redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 16. Total Appropriations.**—Where only a total sum
2 is appropriated to a spending unit that total sum shall include
3 personal services, current expenses and capital outlay, except
4 as otherwise provided in Title 1, Section 3.

1 **Sec. 17. General School Fund.**—The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is appro-
4 priated for expenditure in accordance with Chapter 18, Article
5 9A, Section 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations Conditional.**—The expenditure of
2 the appropriations made by this act, except those appropriations
3 made to the legislative and judicial branches of the state
4 government, are conditioned upon the compliance by the
5 spending unit with the requirements of Chapter 5A, Article
6 2 of the Code of West Virginia.

7 Where former spending units have been absorbed by or
8 combined with other spending units by acts of this Legisla-
9 ture, it is the intent of this act that reappropriation shall
10 be to the succeeding or later spending unit created unless
11 otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is de-
2 clared unconstitutional by a court of competent jurisdiction,
3 its decision shall not affect any portion of this act which
4 remains, but the remaining portion shall be in full force and
5 effect as if the portion declared unconstitutional had never
6 been a part of the act.

CHAPTER 8

(H. B. 1670—By Mr. Burke)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Department of Agriculture, Account No. 510, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 510, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 AGRICULTURE

4 *Department of Agriculture*

5 Acct. No. 510

6 3 Current Expenses _____ \$ 37,200

7 The purpose of this bill is to supplement the aforesaid ac-
8 count and item therein, with such amount being available for
9 expenditure upon the effective date of this bill and in the fiscal
10 year 1975-76. Any unexpended balance remaining at the
11 close of the fiscal year 1975-76, as to this item, is hereby re-
12 appropriated for expenditure during the fiscal year 1976-77.

;

CHAPTER 9

(Com. Sub. for H. B. 1598—By Mr. Seibert)

[Passed March 12, 1976; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriations of the Attorney General, Account No. 240; Fairmont Emergency Hospital, Account No. 425; Hopemont State Hospital, Account No. 430; and Pinecrest State Hospital, Account No. 431, all as appropriated by chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total existing appropriations of Account No. 240, Account No. 425, Account No. 430 and Account No. 431, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be supplemented, amended and transferred to read as follows:

1 LEGAL

2 28—*Attorney General*

3 Acct. No. 240

4	2	Other Personal Services	\$ 787,999
5	4	Equipment	41,000

6 HEALTH AND WELFARE

7 80—*Fairmont Emergency Hospital*

8 Acct. No. 425

9	3	Repairs and Alterations	\$ 3,350
10	4	Equipment	29,600

11 82—*Hopemont State Hospital*

12 Acct. No. 430

13	1	Personal Services	\$2,540,000
14	2	Current Expenses	602,850

15 83—*Pinecrest State Hospital*

16 Acct. No. 431

17	1	Personal Services	\$2,182,950
18	2	Current Expenses	700,955
19	3	Repairs and Alterations	90,350
20	4	Equipment	48,650

21 The purpose of this supplementary appropriation bill is to
 22 supplement, amend and transfer certain moneys from one item
 23 of the existing appropriation to another item of such appropriation
 24 for the designated spending units and accounts thereof,
 25 above, with no new moneys being appropriated hereby. The
 26 amounts as newly itemized in each of the above accounts
 27 for expenditure during the fiscal year one thousand nine
 28 hundred seventy-six shall be available for expenditure upon
 29 the effective date of this bill.

CHAPTER 10

(H. B. 1704—By Mr. Burke)

[Passed March 12, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all funds remaining unappropriated from the Revenue Sharing Trust Fund for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Barboursville State Hospital, Account No. 9734, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1975, which included the statement of Federal Revenue Sharing Funds, further detailed in the Governor's communication of January 24, 1975, including the fiscal year 1975-76; and

WHEREAS, The Legislature has enacted a Budget Bill and supplementary appropriation bills for said fiscal year 1975-76, thereby appropriating a portion of said Federal Revenue Sharing Funds, with a sufficient balance thereof remaining unappropriated and available for appropriation and expenditure for said fiscal year 1975-76; a portion of such balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 9734, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following account:

1 TITLE II—APPROPRIATIONS.

2 Sec. 7. Appropriations from Revenue Sharing Trust Fund.

3 HEALTH AND WELFARE

4 Barboursville State Hospital

5 Acct. No. 9734

6 TO BE PAID FROM REVENUE SHARING TRUST FUND

7 1 Repairs and Alterations \$ 60,000

8 The purpose of this bill is to supplement the aforesaid item
9 to provide moneys for repairs for recreational buildings, with
10 such amount being available for expenditure upon the effective
11 date of this bill and in the fiscal year 1975-76. Any unex-
12 pended balance remaining at the close of the fiscal year 1975-
13 76, as to this item, is hereby reappropriated for expenditure
14 during the fiscal year 1976-77.

CHAPTER 11

(H. B. 1686—By Mr. Burke)

[Passed March 17, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Farm Management Commission, Account No. 500, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriations for the

fiscal year ending June thirtieth, one thousand nine hundred seventy-six; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 500, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from General Revenue.		
3	AGRICULTURE		
4	<i>Farm Management Commission</i>		
5	Acct. No. 500		
6	1	Personal Services	\$ 250,000
7	2	Current Expenses	400,000
8	3	Repairs and Alterations	62,000
9	4	Total	\$ 712,000

10 The purpose of this bill is to supplement the aforesaid
 11 account and items therein for expenditure in the fiscal year
 12 1975-76. Such amounts shall be available for expenditure
 13 upon the effective date of this bill. Any unexpended balance
 14 remaining in this account at the close of the fiscal year 1975-
 15 76 is hereby reappropriated for expenditure during the fiscal
 16 year 1976-77.

;

CHAPTER 12

(S. B. 578—Originating in the Senate Committee on Finance)

[Passed May 15, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six,

for payment of certain claims against the state and designated agencies thereof, supplementing chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, By Enrolled Senate Bill No. 450, acts of the Legislature, regular session, one thousand nine hundred seventy-six, the Legislature found and declared certain claims to be moral obligations of the state and directed the auditor to issue warrants for the payments thereof; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund, as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Awards for Claims Against the State.

3 TO BE PAID FROM GENERAL REVENUE FUND

4 *Claims against the department of public institutions:*

5	1	Drs. Butler, Aceto & Assoc., Inc.	\$	8.00
6	2	Xerox Corporation		798.46
7	3	Mellon-Stuart Company		5,919.64
8	4	West Virginia State Industries		3,857.84

9	5	Kirk's Photo-Art Center	452.19
10	6	Goldsmid-Black, Inc.	1,407.75
11	7	Ashland Chemical Company	51.80
12	8	Mountaineer Motel, Inc.	250.79

13 *Claims against the sinking fund commission:*

14 1 International Business Machines Corporation 61.40

15 2 Total \$12,807.87

16 The amount as appropriated and itemized for expendi-
 17 ture during the fiscal year ending June thirtieth, one
 18 thousand nine hundred seventy-six, shall be available for
 19 expenditure upon the effective date of this act.

20 If this amount or any portion thereof remains unex-
 21 pended at the close of such fiscal year, it is hereby re-
 22 appropriated for expenditure during fiscal year 1976-77.

CHAPTER 13

(S. B. 570—Originating in the Senate Committee on Finance)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Department of Public Safety, as appropriated by Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 570, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be supplemented, amended and transferred to read as follows:

1

PROTECTION

2

112—*Department of Public Safety*

3

Acct. No. 570

4 1 Personal Services _____ \$ 6,203,553

5 2 Current Expenses _____ 2,655,000

6 The purpose of this supplementary appropriation bill
 7 is to supplement, amend and transfer certain moneys from
 8 one item of the existing appropriation to another item of
 9 such appropriation for the designated spending unit. The
 10 amounts as itemized for expenditure during the fiscal
 11 year one thousand nine hundred seventy-six, shall be
 12 made available for expenditure upon the effective date
 13 of this bill.

♦

CHAPTER 14

(S. B. 580—Originating in the Senate Committee on Finance)

[Passed May 15, 1976; In effect July 1, 1976. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the State Fire Commission, Account No. 617, Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropria-

tion balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, one thousand nine hundred seventy-six, enacted a Budget Bill for the fiscal year 1976-77 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven; a portion of said balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following new Account No. 617, with the designated line items and sums:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from General Revenue.		
3	PROTECTION		
4	128a— <i>State Fire Commission</i>		
5	Acct. No. 617		
6	1	Personal Services	\$ 245,047
7	2	Current Expenses	72,960
8	3	Repairs and Alterations	2,150
9	4	Equipment	3,000
10	5	Total	\$ 323,157

11 The purpose of this supplementary appropriation bill
12 is to fund the State Fire Commission, created by Enrolled
13 Senate Bill No. 146, acts of the Legislature, regular session,
14 one thousand nine hundred seventy-six.

CHAPTER 15

(S. B. 575—By Mr. Rogerson)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT amending, supplementing and reappropriating an existing appropriation as appropriated in Title II, Section 1, Enrolled Committee Substitute for Senate Bill No. 23, an act of the Legislature, regular session and first extraordinary session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The purpose of this bill is to add reappropriating authority to the West Virginia Board of Regents (Control) Account No. 279; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 279, Enrolled Committee Substitute for Senate Bill No. 23, an act of the Legislature, regular session and first extraordinary session, one thousand nine hundred seventy-five, known as the Budget Bill, be amended and supplemented by adding the following language to the designated lines:

- 1 Any unexpended balance remaining in the appropria-
- 2 tion for "West Virginia School of Osteopathic Medicine,"
- 3 at the close of the fiscal year 1975-76 is hereby reappro-
- 4 priated for expenditure during the fiscal year 1976-77,
- 5 and may be transferred to the 1976-77 fiscal year.

CHAPTER 16

(S. B. 514—Originating in the Senate Committee on Finance)

[Passed March 13, 1976; in effect ninety days from passage.
Disapproved by the Governor and repassed notwithstanding his objections.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a;

to amend and reenact section three, article one, chapter five-a of said code; to amend and reenact sections three, five, ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-six, twenty-seven and thirty-four, article two of said chapter five-a; to further amend article two of said chapter five-a by adding thereto a new section, designated section thirty-six; and to amend and reenact section three, article four, chapter twelve of said code, all relating to implementation of the modern budget amendment; relating to submission of the budget bill to the Legislature by the governor; statement of legislative findings and purposes; requiring the proposed appropriations of the budget bill to be itemized and classified as prescribed by said article; prescribing the form and detail for the submission of appropriations for the legislative and judicial branches; creating a system of uniform itemization for the proposed appropriations for spending units of the executive department, and defining the uniform items; permitting the governor to submit subclassifications and subitems under such uniform items; permitting the governor to submit separate line items for specific programs of a spending unit; permitting an "unclassified" item; permitting the governor to submit proposed appropriations for a single spending unit under more than one account number; prescribing the itemization of proposed appropriations for the state department of highways and state aid to schools; relating to the council of finance and administration, quarterly meetings to be called; site of meetings; requests for appropriations; requiring spending officers to transmit copies of such requests to legislative auditor; funds of spending unit withheld until copies forthcoming; forms of requests; tentative budget to be prepared by commissioner of finance and administration and submitted to governor; commissioner to submit copies to Legislature; treasurer's certification to accompany tentative budget; itemization of tentative budget; definitions of uniform items; requiring commissioner to certify revenue estimates and reports on revenue collections to governor and legislative auditor; funds of department withheld until certifications forthcoming; expenditure schedules; requiring spending offi-

cers to transmit copies to legislative auditor; funds of spending unit withheld until copies forthcoming; expenditure schedule to provide information on positions budgeted under personal services; requiring copies of requested amendments and approved amendments in such schedules to be transmitted to legislative auditor; requiring commissioner to transmit copies of reports from spending units to legislative auditor; requiring state agencies to send copies of requests for federal aid to legislative auditor; requiring commissioner to send copies of federally-approved requests to legislative auditor; requiring commissioner to submit consolidated report of federal funds to legislative auditor; eliminating authority of governor to make transfers of appropriations; personnel classification of offices and employments in state government; providing a criminal penalty for failure to transmit copies of requests, tentative budget, schedules, reports, etc., to legislative auditor, and requiring certification by treasurer of the condition of state revenues and funds.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a; that section three, article one, chapter five-a of said code be amended and reenacted; that sections three, five, ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-six, twenty-seven and thirty-four, article two of said chapter five-a be amended and reenacted; that article two of said chapter five-a be further amended by adding thereto a new section, designated section thirty-six, and that section three, article four, chapter twelve of said code be amended and reenacted, all to read as follows:

Chapter

- 5. General Powers and Duties of the Governor, Secretary of State and Attorney General; Itemization of Proposed Appropriations in Budget Bill Submitted by Governor to Legislature; Board of Public Works; Salary Increase for State Employees; State Building**

Commission; Social Security Agency; Public Records Management and Preservation Act; Department of Commerce; West Virginia Public Employees Retirement Act; Human Rights Commission; West Virginia Antiquities Commission; Public Employees' and Teachers' Reciprocal Service Credit Act; White Cane Law; West Virginia Public Employees Insurance Act; West Virginia Commission on Energy, Economy and Environment.

5A. Department of Finance and Administration.

12. Public Moneys and Securities.

CHAPTER 5.

GENERAL POWERS AND DUTIES OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE; BOARD OF PUBLIC WORKS; SALARY INCREASE FOR STATE EMPLOYEES; STATE BUILDING COMMISSION; SOCIAL SECURITY AGENCY; PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT; DEPARTMENT OF COMMERCE; WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT; HUMAN RIGHTS COMMISSION; WEST VIRGINIA ANTIQUITIES COMMISSION; PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE CREDIT ACT; WHITE CANE LAW; WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT; WEST VIRGINIA COMMISSION ON ENERGY, ECONOMY AND ENVIRONMENT.

ARTICLE 1A. ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE.

- §5-1A-1. Legislative findings and purposes.
- §5-1A-2. Submission of budget bill; form prescribed by article.
- §5-1A-3. Proposed appropriations for legislative and judicial branches.
- §5-1A-4. Uniform itemization; definitions; subclassifications and subitems; separate line items for specific programs or purposes; separate account numbers for single spending units permitted.
- §5-1A-5. Itemization of appropriations for state department of highways; state aid to schools.

§5-1A-1. Legislative findings and purposes.

1 The Legislature finds and declares that section fifty-one,
2 article six of the constitution, known as the "modern
3 budget amendment", authorizes the Legislature to pre-
4 scribe by law the form and detail of the itemization and
5 classification of the proposed appropriations of the budget
6 bill submitted to it by the governor, and that said section
7 further authorizes the Legislature to enact such laws,
8 not inconsistent with said section, as may be necessary
9 and proper to carry out its provisions. The Legislature
10 further finds and declares that said section makes the
11 Legislature solely responsible for enacting all appropri-
12 ations needed for the operation of state government, and
13 that in carrying out such responsibility, the Legislature
14 requires a continuous and timely flow of accurate in-
15 formation relative to the financial condition of the state,
16 the needs and operations of the various agencies and de-
17 partments of the state, and the amounts and purposes of
18 all funds, including federal funds, being requested, re-
19 ceived or expended by such agencies and departments
20 from sources other than the revenues of the state.

21 Therefore, it is the purpose of this article to implement
22 the aforementioned provisions of the constitution, to
23 enable the Legislature to carry out its constitutional re-
24 sponsibility by prescribing the form and detail of the
25 itemization and classification of the proposed appropri-
26 ations of the budget bill submitted to the Legislature by
27 the governor, and in conjunction with the provisions of
28 this act amending certain sections of articles one and
29 two, chapter five-a, and section three, article four, chapter
30 twelve, to ensure that the Legislature will be furnished
31 the information needed to discharge such responsibility.

§5-1A-2. Submission of budget bill; form prescribed by article.

1 Pursuant to section fifty-one, article six of the constitu-
2 tion of West Virginia, the governor shall deliver to the
3 presiding officer of each house the budget and a bill for
4 all the proposed appropriations of the budget. The pro-
5 posed appropriations in such bill shall be clearly itemized

6 and classified in the form and detail prescribed by this
7 article.

**§5-1A-3. Proposed appropriations for legislative and judicial
branches.**

1 (a) The proposed appropriations in such bill for the
2 legislative branch shall be itemized and classified by the
3 governor in the identical amounts, language, form and
4 detail as certified by the presiding officer of each house
5 and transmitted to the governor.

6 (b) The proposed appropriations in such bill for the
7 judicial branch shall be itemized and classified by the
8 governor in the identical amounts, language, form and
9 detail as certified by the auditor and transmitted to the
10 governor.

**§5-1A-4. Uniform itemization; definitions; subclassifications
and subitems; separate line items for specific pro-
grams or purposes; separate account numbers for
single spending units permitted.**

1 (a) With the exception of the spending units or pur-
2 poses mentioned in section five of this article, the pro-
3 posed appropriations submitted by the governor for the
4 spending units of the executive department shall be
5 itemized and classified according to the provisions of this
6 section. The budget bill shall itemize appropriations
7 separately for:

8 (1) "Personal services" which shall mean salaries,
9 wages, and other compensation paid to full-time, part-
10 time and temporary employees of the spending unit, but
11 shall not include fees or contractual payments paid to
12 consultants or to independent contractors engaged by
13 the spending unit. Unless otherwise specified in the
14 budget bill, appropriations for personal services shall
15 include salaries of heads of spending units. Where a
16 salary of a head of a spending unit, including a constitu-
17 tional officer, is separately stated, all other personal ser-
18 vices for the spending unit shall be designated in the bill
19 as "Other Personal Services."

20 (2) "Current expenses" which shall mean operating
21 costs other than personal services, and shall not include
22 equipment, repairs and alterations, buildings or lands.

23 (3) "Equipment" which shall mean equipment items
24 which have an appreciable and calculable period of use-
25 fulness in excess of one year.

26 (4) "Repairs and alterations" which shall mean re-
27 pairs to structures and improvements to property which
28 do not increase the capital asset.

29 (5) "Buildings" which shall include construction and
30 alteration of structures and the improvement of lands
31 and shall include shelter, support, storage, protection,
32 or the improvement of a natural condition.

33 (6) "Lands" which shall mean the purchase of real
34 property or interests in real property.

35 Nothing in this section shall prohibit the governor from
36 listing in the budget bill any subclassifications and sub-
37 items of proposed expenditure under any or all of the
38 above uniform items: *Provided*, That a total proposed
39 expenditure for each uniform item shall be stated, and
40 such total shall include the proposed expenditure for
41 each subclassification and subitem, if any, listed under
42 such uniform item.

43 (b) Notwithstanding the uniform items set forth in
44 subsection (a) of this section, when the governor deems
45 it necessary or convenient to establish separate line items
46 for specific programs proposed to be undertaken or con-
47 tinued by a spending unit, or for specific purposes which
48 do not fall within such uniform items, such separate
49 line items may be included in the appropriations for the
50 spending unit, and need not be itemized in accordance
51 with the requirements of subsection (a). In such event,
52 there shall be a separate line item for each such specific
53 program or purpose. All other proposed appropriations
54 for a spending unit or account shall be included within
55 the uniform items prescribed in subsection (a): *Provided*,
56 That there may be included in the itemization for any
57 spending unit an item designated "unclassified", in an

58 amount not exceeding one percent of the total amount
59 of the proposed appropriations for such spending unit.

60 (c) Nothing in this section shall prohibit the governor
61 from submitting proposed appropriations for a single
62 spending unit under more than one account number, pro-
63 vided that such appropriations are itemized and classified
64 in accordance with the requirements of this article.

**§5-1A-5. Itemization of appropriations for state department
of highways; state aid to schools.**

1 (a) Proposed appropriations for the state department
2 of highways shall be itemized separately for:

3 (1) "Debt service" which shall mean the payment of
4 principal and interest due on all state bonds issued for
5 the benefit of the state road fund;

6 (2) "General operations" which shall include all ex-
7 penses of administration of the Department of Highways;

8 (3) "Federal Aid Construction—Interstate Program";

9 (4) "Nonfederal Aid Construction";

10 (5) "Appalachian Program";

11 (6) "Other Federal Aid Programs";

12 (7) "Inventory Purchases";

13 (8) "Maintenance—State Local Service";

14 (9) "Maintenance—Expressway, Trunkline and Feed-
15 er";

16 (10) "Claims."

17 Any specific purposes which do not fall within the
18 above items may be itemized and designated separately
19 by the governor.

20 (b) Proposed appropriations for "State Aid to Schools"
21 shall be itemized separately for each allowance set forth
22 in section three, article nine-a, chapter eighteen of this
23 code, for each allowance mentioned elsewhere in said
24 article and chapter, and for any other purpose mentioned

25 in said article and chapter for which an appropriation
26 must be made from the general revenue fund.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

Article

1. Department of Finance and Administration.
2. Budget Division.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-3. Council of finance and administration.

1 The council of finance and administration is hereby
2 created and shall be composed of ten members, four of
3 whom shall serve ex officio and six of whom shall be
4 appointed as herein provided. The ex officio members shall
5 be the governor, attorney general, the state treasurer and
6 the state auditor. From the membership of the Legisla-
7 ture, the president of the Senate shall appoint three
8 senators as members of the council, not more than two of
9 whom shall be members of the same political party, and
10 the speaker of the House shall appoint three delegates as
11 members of the council, not more than two of whom shall
12 be members of the same political party. Members of the
13 council appointed by the president of the Senate and the
14 speaker of the House shall serve at the will and pleasure
15 of the officer making their appointment. The commissioner
16 of finance and administration shall serve as chairman of
17 the council. Meetings of the council shall be upon call of
18 the chairman or a majority of the members thereof. It
19 shall be the duty of the chairman to call at least four
20 meetings in each fiscal year, one in each quarter, and all
21 meetings shall be open to the public. All meetings of the
22 council shall be held at the capitol building in a suitable
23 committee room which shall be made available by the
24 Legislature for such purpose: *Provided*, That the second
25 quarterly meeting in each fiscal year shall be held on the
26 first Monday in November and shall be a joint meeting
27 with the joint committee on government and finance of
28 the Legislature.

29 The council shall serve the department of finance and

30 administration in an advisory capacity for purposes of
31 reviewing the performance of the administrative and fiscal
32 procedures of the state and shall have the following
33 duties:

34 (1) To review and advise with the commissioner as to
35 all budget proposals to be submitted to the governor;

36 (2) At the time of the submission of the proposed
37 budget to the governor, to report to the governor its
38 conclusions concerning the proposed budget and any
39 additions, modifications or adjustments that it may care to
40 suggest;

41 (3) To advise with the commissioner concerning such
42 studies of government and administration as it may con-
43 sider appropriate; and

44 (4) To advise with the commissioner in the preparation
45 of studies designed to provide long-term capital planning
46 and finance for state institutions and agencies. Members
47 of the council shall be paid all necessary expenses in-
48 curred in the discharge of their duties.

ARTICLE 2. BUDGET DIVISION.

§5A-2-3. Requests for appropriations; copies to legislative auditor.

§5A-2-5. Forms of requests.

§5A-2-10. Preparation of tentative budget and submission to governor;
copies to Legislature.

§5A-2-11. Itemization of tentative budget.

§5A-2-12. Powers of commissioner in administration of expenditures.

§5A-2-13. Estimates of revenue; reports on revenue collections; withholding
department funds on noncompliance.

§5A-2-14. Submission of expenditure schedules; contents; copies to legislative
auditor.

§5A-2-15. Examination and approval of expenditure schedules; amendments;
copies to legislative auditor.

§5A-2-21. Reports by spending units; copies to legislative auditor.

§5A-2-26. Approval by commissioner of requests for federal aid; copies to
legislative auditor; consolidated report of federal funds.

§5A-2-27. Management accounting.

§5A-2-34. Personnel classification of offices and employments in state govern-
ment and agencies.

§5A-2-36. Submission of requests, amendments, reports, etc., to legislative
auditor; penalty for noncompliance.

§5A-2-3. Requests for appropriations; copies to legislative auditor.

1 The spending officer of each spending unit, other than
2 the Legislature and the judicial branch of state govern-
3 ment, shall on or before the fifteenth day of August of
4 each year, submit to the commissioner a request for ap-
5 propriations for the fiscal year next ensuing. On or before
6 the same date, the spending officer shall also transmit two
7 copies of such request to the legislative auditor for the
8 use of the finance committees of the Legislature.

9 If the spending officer of any spending unit fails to
10 transmit to the legislative auditor two copies of the re-
11 quest for appropriations within the time specified in this
12 section, the legislative auditor shall notify the commis-
13 sioner, auditor and treasurer of such failure, and there-
14 after no funds appropriated to such spending unit shall be
15 encumbered or expended until the spending officer thereof
16 has transmitted such copies to the legislative auditor.

17 If a spending officer submits to the commissioner an
18 amendment to the request for appropriations, two copies
19 of such amendment shall forthwith be transmitted to the
20 legislative auditor.

§5A-2-5. Forms of requests.

1 The commissioner shall specify the form and detail of
2 itemization of requests for appropriations and statements
3 to be submitted by a spending unit: *Provided*, That such
4 request for appropriations must include at a minimum the
5 information required by section four of this article. The
6 commissioner shall furnish blank forms for this purpose.

§5A-2-10. Preparation of tentative budget and submission to governor; copies to Legislature.

1 The commissioner shall prepare for the consideration of
2 the governor a tentative budget for the fiscal year next en-
3 suing. The budget shall state actual receipts and expendi-
4 tures for the fiscal year next preceding, estimated receipts
5 and expenditures for the current fiscal year, recommended
6 expenditures for the current fiscal year as shown in the

7 legislative digest, and it shall state also the requested
8 amounts or estimates for the fiscal year next ensuing
9 with respect to:

10 (1) Appropriations requested by each spending unit
11 and requested general appropriations;

12 (2) The amount of the total of each appropriation to
13 be paid out of collections;

14 (3) Amounts and purposes of appropriations requested
15 other than for spending units of the state;

16 (4) Revenue of each of the funds of the state;

17 (5) A summary statement of requests and revenues
18 showing the amount of an anticipated surplus or deficit;

19 (6) Balances carried forward to the first day of July,
20 from the fiscal year next preceding on all reappropriated
21 accounts from general revenue fund and general school
22 fund;

23 (7) Percentage of increase or decrease by comparison
24 of recommended appropriation for next ensuing year
25 with current fiscal year.

26 On or before the fifteenth day of November, the com-
27 missioner shall submit the tentative budgets to the gov-
28 ernor. The commissioner shall convey to the governor all
29 explanatory and justification statements and statements of
30 personnel requirements of spending units as reported and
31 filed in his office, together with the certification of the
32 state treasurer verifying the condition of the state rev-
33 enues and the several funds of the state as required to
34 be provided to the commissioner under the provisions of
35 section three, article four, chapter twelve of this code.

36 At the time the commissioner submits the tentative
37 budget to the governor, he shall also submit copies thereof
38 to the president of the Senate, the speaker of the House of
39 Delegates and the legislative auditor. At any time there-
40 after that a change or supplement to the tentative budget
41 is submitted to the governor by the commissioner, the
42 commissioner shall submit a copy thereof to the legislative
43 auditor.

§5A-2-11. Itemization of tentative budget.

1 The tentative budget submitted by the commissioner
2 shall itemize appropriations separately for:

3 (1) "Personal services" which shall mean salaries,
4 wages, and other compensation paid to full-time, part-
5 time and temporary employees of the spending unit,
6 but shall not include fees or contractual payments paid
7 to consultants or to independent contractors engaged
8 by the spending unit: *Provided*, That the total expendi-
9 ture shown for personal services shall reflect the actual
10 expenditure for each line item under this classifica-
11 tion;

12 (2) "Current expenses" which shall mean operating
13 costs other than personal services, and shall not include
14 equipment, repairs and alterations, buildings or lands;

15 (3) "Equipment" which shall mean equipment items
16 which have an appreciable and calculable period of
17 usefulness in excess of one year;

18 (4) "Repairs and alterations" which shall mean re-
19 pairs to structures and improvements to property which
20 do not increase the capital asset;

21 (5) "Buildings" which shall include construction and
22 alteration of structures and the improvement of lands
23 and shall include shelter, support, storage, protection
24 or the improvement of a natural condition; and

25 (6) "Lands" which shall mean the purchase of real
26 property or interests in real property.

27 A spending unit or other person requesting an appro-
28 priation may submit a different itemization with the
29 prior approval of the commissioner, if the uniform item-
30 ization does not apply.

§5A-2-12. Powers of commissioner in administration of expenditures.

1 The commissioner shall supervise and control the
2 expenditure of appropriations made by the Legislature
3 excluding those made to the Legislature and those made

4 to the judicial branch of the state government. The
5 expenditure of an appropriation made by the Legisla-
6 ture except that made for the Legislature itself and
7 the judicial branch of the state government shall be
8 conditioned upon compliance by the spending unit with
9 the provisions of this article. An appropriation made by
10 the Legislature except that made for the Legislature
11 itself and the judicial branch of the state government
12 shall be expended only in accordance with this article.

**§5A-2-13. Estimates of revenue; reports on revenue collections;
withholding department funds on noncompliance.**

1 At the beginning of each fiscal year the commissioner
2 shall estimate the revenue to be collected month by
3 month by each classification of tax for that fiscal year
4 as it relates to the official estimate of revenue for each
5 tax for that fiscal year and the commissioner shall cer-
6 tify this estimate to the governor and the legislative
7 auditor by the thirty-first day of July for that fiscal
8 year.

9 The commissioner shall ascertain the collection of the
10 revenue of the state and shall determine for each month
11 of the fiscal year the proportion which the amount ac-
12 tually collected during a month bears to the collection
13 estimated by him for that month. The commissioner
14 shall certify to the governor and the legislative auditor,
15 as soon as possible after the close of each month, and
16 not later than the fifteenth day of each month, and at
17 such other times as the governor or legislative auditor
18 may request, the condition of the state revenues and
19 of the several funds of the state and the proportion
20 which the amount actually collected during the pre-
21 ceding month bears to the collection estimated by him
22 for that month. The commissioner shall include in this
23 certification the same information previously certified
24 for prior months in each fiscal year. For the purposes
25 of this section, the commissioner shall have the authority
26 to require all necessary estimates and reports from any
27 spending unit of the state government.

28 If the commissioner fails to certify to the governor
29 and the legislative auditor the information required by

30 this section within the time specified herein, the legis-
31 lative auditor shall notify the auditor and treasurer of
32 such failure, and thereafter no funds appropriated to
33 the department of finance and administration shall be
34 expended until the commissioner has certified the infor-
35 mation required by this section.

**§5A-2-14. Submission of expenditure schedules; contents;
copies to legislative auditor.**

1 Prior to the beginning of each fiscal year, the spending
2 officer of a spending unit shall submit to the commissioner
3 a detailed expenditure schedule for the ensuing fiscal year.
4 The schedule shall be submitted in such form and at such
5 time as the commissioner may require.

6 The schedule shall show:

7 (1) A proposed monthly rate of expenditure for
8 amounts appropriated for personal services;

9 (2) Each and every position budgeted under personal
10 services for the next ensuing fiscal year, with the monthly
11 salary or compensation of each such position;

12 (3) A proposed quarterly rate of expenditure for
13 amounts appropriated for current expenses, equipment
14 and repairs and alterations;

15 (4) A proposed yearly plan of expenditure for amounts
16 appropriated for buildings and lands.

17 The commissioner may accept a differently itemized
18 expenditure schedule from a spending unit to which the
19 above itemizations are not applicable.

20 The commissioner shall consult with and assist spend-
21 ing officers in the preparation of expenditure schedules.

22 When a spending officer submits an expenditure sched-
23 ule to the commissioner as required by this section, the
24 spending officer shall at the same time transmit a copy
25 thereof to the legislative auditor. If a spending officer
26 of a spending unit fails to transmit such copy to the
27 legislative auditor on or before the beginning of the
28 fiscal year, the legislative auditor shall notify the com-
29 missioner, auditor and treasurer of such failure, and

30 thereafter no funds appropriated to such spending unit
31 shall be encumbered or expended until the spending
32 officer thereof has transmitted such copy to the legisla-
33 tive auditor.

**§5A-2-15. Examination and approval of expenditure schedules;
amendments; copies to legislative auditor.**

1 The commissioner shall examine the expenditure sched-
2 ule of each spending unit, and if he finds that it con-
3 forms to the appropriations made by the Legislature, the
4 requirements of this article, and is in accordance with
5 sound fiscal policy, he shall approve the schedule.

6 The expenditure of the appropriations made to a
7 spending unit shall be only in accordance with the ap-
8 proved expenditure schedule unless the schedule is
9 amended with the consent of the commissioner, or unless
10 appropriations are reduced in accordance with the pro-
11 visions of sections twenty-two to twenty-five, inclusive,
12 of this article. The spending officer of a spending unit
13 shall transmit to the legislative auditor a copy of each
14 and every requested amendment to such schedule at the
15 same time that such requested amendment is submitted
16 to the commissioner. The commissioner shall send to the
17 legislative auditor copies of any schedule amended with
18 the commissioner's approval.

**§5A-2-21. Reports by spending units; copies to legislative
auditor.**

1 A spending unit shall submit to the commissioner such
2 reports with respect to the work and expenditures of
3 the unit as the commissioner may request for the pur-
4 poses of this article. Upon receipt thereof, the commis-
5 sioner shall immediately send copies of all such reports
6 to the legislative auditor.

**§5A-2-26. Approval by commissioner of requests for federal
aid; copies to legislative auditor; consolidated re-
port of federal funds.**

1 Every agency of the state government when making
2 requests or preparing budgets to be submitted to the
3 federal government for funds, equipment, material or

4 services, the grant or allocation of which is conditioned
5 upon the use of state matching funds, shall have such
6 request or budget approved in writing by the commis-
7 sioner before submitting it to the proper federal au-
8 thority. At the time such agency submits such a request
9 or budget to the commissioner for his approval, it shall
10 send a copy thereof to the legislative auditor. When such
11 federal authority has approved the request or budget,
12 the agency of the state government shall resubmit it to
13 the commissioner for recording before any allotment
14 or encumbrance of the federal funds can be made and
15 the commissioner shall send a copy of the federally ap-
16 proved request or budget to the legislative auditor.
17 Whenever any agency of the state government shall re-
18 ceive from any agency of the federal government a grant
19 or allocation of funds which do not require state match-
20 ing, the state agency shall report to the commissioner
21 and the legislative auditor for their information the
22 amount of the federal funds so granted or allocated.

23 In addition to the other requirements of this section,
24 the commissioner shall, as soon as possible after the end
25 of each fiscal year but no later than the first day of
26 September of each year, submit to the governor and the
27 legislative auditor a consolidated report which shall con-
28 tain a detailed itemization of all federal funds received
29 by the state during the preceding and current fiscal years,
30 as well as those scheduled or anticipated to be received
31 during the next ensuing fiscal year. Such itemization
32 shall show: (a) Each spending unit which has received
33 or is scheduled or expected to receive federal funds in
34 either of such fiscal years, (b) the amount of each separate
35 grant or distribution received or to be received, (c) a
36 brief description of the purpose of every such grant or
37 other distribution, with the name of the federal agency,
38 bureau or department making such grant or distribution:
39 *Provided*, That it shall not be necessary to include in such
40 report an itemization of federal revenue sharing funds
41 deposited in and appropriated from the revenue sharing
42 trust fund, or federal funds received for the benefit of
43 the department of highways and the state road fund.

44 The commissioner is authorized and empowered to
45 obtain from the spending units any and all information
46 necessary to prepare such report.

§5A-2-27. Management accounting.

1 The commissioner shall formulate the requirements of
2 a system of management accounting for the planning,
3 management, reporting and control of state expenditures.
4 The requirements shall include methods for recording the
5 collection of all income, amounts available for expendi-
6 ture, obligations, encumbrances and disbursements for
7 each spending unit, and publication of a detailed state-
8 ment of receipts and expenditures of state moneys. The
9 system shall include the accounts to be kept by the com-
10 missioner, the auditor and the treasurer. The commission-
11 er shall, after the system has been approved by the gov-
12 ernor, require its use by all spending units.

**§5A-2-34. Personnel classification of offices and employments
in state government and agencies.**

1 With the exception of those institutions under the
2 control of the state board of education and the West Vir-
3 ginia board of regents and with the exception of classi-
4 fied service positions and pay provided for in section eight,
5 article six, chapter twenty-nine of this code, the commis-
6 sioner, with the approval of the governor, shall classify
7 the offices and employments in the state government and
8 its agencies into a personnel classification which reflects
9 the differences in training, experience, ability and respon-
10 sibility required for different types or kinds of service
11 or employment and shall establish uniform salary and
12 wage scales within each class.

13 The governor shall require the state board of education
14 and the West Virginia board of regents to prepare and
15 apply personnel classifications to the institutions under
16 their control.

**§5A-2-36. Submission of requests, amendments, reports, etc., to
legislative auditor; penalty for noncompliance.**

1 The provisions of sections three, ten, thirteen, fourteen,
2 fifteen, twenty-one, twenty-six and twenty-eight of this

3 article requiring the commissioner or the spending officer
4 of the spending units, as the case may be, to supply copies
5 of the documents specified therein to the legislative
6 auditor, shall be strictly adhered to by all such persons.
7 Any failure by any person to do so shall be a misdemeanor,
8 and, upon conviction thereof, such person shall be fined
9 the sum of one thousand dollars. Such penalty shall be
10 in addition to other penalties provided elsewhere in this
11 article and other remedies provided by law.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-3. Accounts of appropriations; treasurer to certify condition of revenues and funds of the state.

1 The auditor and treasurer shall each keep in books to
2 be used for that purpose exclusively an account of every
3 appropriation made by law, and of the several sums drawn
4 thereon, so that such books may show at all times the
5 balance undrawn on each appropriation. The account so
6 kept shall be compared every quarter-year and the errors,
7 if any, be corrected.

8 In addition to the other requirements of this section,
9 the treasurer shall certify annually to the commissioner
10 of finance and administration the condition of the state
11 revenues and the several funds of the state. Such
12 certification shall be used by such commissioner in the
13 preparation of a tentative state budget as required of
14 him by article two, chapter five-a of this code.

CHAPTER 17

(H. B. 1647—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transfers of amounts between items of appropriations for spending units of the executive, leg-

islative and judicial branches of state government; specifying prohibitions, and providing ways of effectuating such transfers.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. BUDGET DIVISION.

§5A-2-19. Transfers between items of appropriation of executive, legislative and judicial branches.

1 Notwithstanding any other provision of law to the contrary,
2 there shall be no transfer of amounts between items of appro-
3 priations nor shall moneys appropriated for any particular pur-
4 pose be expended for any other purpose by any spending unit
5 of the executive, legislative or judicial branch except as here-
6 inafter provided:

7 (1) Any transfer of amounts between items of appropriations
8 for the executive branch of state government shall be made
9 only as specifically authorized by the Legislature.

10 (2) Any transfer of amounts between items of appropria-
11 tions for the legislative branch of state government shall be
12 made only pursuant to the joint rules adopted by such body
13 and any amendments thereto, as certified to the state auditor,
14 the state treasurer and the legislative auditor.

15 (3) Any transfer of amounts between items of appropria-
16 tions for the judicial branch of state government shall be made
17 only pursuant to rules adopted by the supreme court of appeals
18 and any amendments thereto, as certified to the state auditor,
19 the state treasurer and the legislative auditor.

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CHAPTER 18

(H. B. 1572—By Mr. Speaker, Mr. McManus and Mr. Seibert)

[Passed March 3, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by

adding thereto a new section, designated section twelve-a, relating to nonintoxicating beer; establishing requirements for the issuance of a brewer's license to a foreign corporation; providing that under certain circumstances none of the officers or directors of such foreign corporation need be residents of this state; establishing an annual license fee for such a brewer's license; providing for the renewal of such a brewer's license; prohibiting a licensed brewer from engaging in the business of a distributor or retailer; and relating to the suspension of such a brewer's license.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a, to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-12a. Brewer's license for foreign corporation; application; bond; contents of application; limitations; annual license fee; renewal; suspension.

1 (a) A brewer's license shall be issued by the commissioner
2 to a foreign corporation which submits an application therefor
3 accompanied by the license fee hereinafter prescribed, the bond
4 required by section five of this article and a certified copy of
5 the certificate of authority issued by the secretary of state
6 authorizing such foreign corporation to transact business in this
7 state. Such application shall be verified and shall state:

8 (1) The name of the corporation and the state under the
9 laws of which it is incorporated;

10 (2) The date of incorporation;

11 (3) The address of the principal office of the corporation;

12 (4) The names and respective addresses of the directors and
13 officers of the corporation; and

14 (5) The date that such foreign corporation qualified to
15 transact business in this state.

16 (b) So long as such foreign corporation remains qualified

17 to transact business in this state so that the secretary of state
18 can accept service of notice and process for such foreign cor-
19 poration, then, notwithstanding any other provision of this
20 article to the contrary, none of the officers and directors of
21 such foreign corporation need be residents of this state.

22 (c) The license fee for a brewer's license for a foreign
23 corporation, whether or not its principal place of business be
24 located in this state, shall be five hundred dollars per annum
25 for each brewery located in this state. The license period shall
26 begin on the first day of July of each year and end on the
27 thirtieth day of June of the following year, and if granted for
28 a lesser period, the same shall be prorated quarterly in pro-
29 portion to the remainder of the fiscal year.

30 (d) A brewer's license issued under the provisions of this
31 section shall be renewed annually upon application for renewal
32 on a form prescribed by the commissioner and payment of the
33 annual license fee.

34 (e) If at any time such foreign corporation is no longer
35 qualified to transact business in this state, the secretary of state
36 shall notify the commissioner of such fact and the commissioner
37 shall thereupon suspend the brewer's license issued to such
38 foreign corporation until such time as such foreign corpora-
39 tion has again qualified to transact business in this state and
40 has otherwise complied with the provisions of this section.

41 Notwithstanding any other provision of this article to the
42 contrary, any corporation issued a brewer's license under the
43 provisions of this article shall not engage in the business of
44 a distributor or retailer as defined in this article.

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CHAPTER 19

(Com. Sub. for H. B. 862—By Mr. Speaker, Mr. McManus, and Mr. Rollins)

[Passed March 10, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article sixteen,
chapter eleven of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to the rights of a distributor under franchise agreement with a brewer.

Be it enacted by the Legislature of West Virginia:

That section thirteen-b, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13b. Unlawful acts of brewers and distributors; requirements as to franchise agreements; penalties; injunctions.

1 (a) On and after July one, one thousand nine hundred
2 seventy-one, it shall be unlawful for any brewer to transfer
3 or deliver to a distributor any nonintoxicating beer, ale or
4 other malt beverage without first having entered into an
5 equitable franchise agreement with such distributor, which
6 franchise agreement shall be in writing, shall be identical
7 as to terms and conditions with all other franchise agreements
8 between such brewer and its other distributors in this state,
9 and which shall contain a provision in substance or effect as
10 follows:

11 The brewer recognizes that the distributor is free to man-
12 age his business in the manner the distributor deems best, and
13 that this prerogative vests in the distributor the exclusive right
14 to establish his selling prices, to select the brands of beer he
15 wishes to handle, and to determine the efforts and resources
16 which the distributor will exert to develop and promote the
17 sale of the brewer's products handled by the distributor. How-
18 ever, since the brewer does not expect that its products
19 handled by the distributor will be sold by others in the terri-
20 tory assigned to the distributor, the brewer is dependent upon
21 the distributor alone for the sale of such products in said
22 territory. Consequently, the brewer expects that the distri-
23 butor will price competitively the products handled by the
24 distributor, devote reasonable effort and resources to the sale
25 of such products and maintain a satisfactory sales level.

26 Whenever the manufacturing, bottling, or other production
27 rights for the sale of nonintoxicating beer at wholesale of any

28 brewer is acquired by another brewer, the franchised dis-
29 tributor of the selling brewer shall be entitled to continue
30 distributing the selling brewer's beer products as autho-
31 rized in the distributor's existing franchise agreement, and the
32 acquiring brewer shall market all the selling brewer's beer
33 products through said franchised distributor as though the
34 acquiring brewer had made the franchise agreement, and the
35 acquiring brewer may terminate said franchise agreement only
36 in accordance with subdivision (2), subsection (b) of this sec-
37 tion: *Provided*, That the acquiring brewer may distribute any of
38 its other beer products through its duly authorized franchises
39 in accordance with all other provisions of this section.

40 (b) It shall also be unlawful:

41 (1) For any brewer or distributor, or any officer, agent or
42 representative of any brewer or distributor, to coerce or
43 persuade or attempt to coerce or persuade any person licensed
44 to sell, distribute or job nonintoxicating beer, ale or other
45 malt beverage at wholesale or retail, to enter into any
46 contracts or agreements, whether written or oral, or to take
47 any other action, which will violate or tend to violate any
48 provision of this article or any of the rules, regulations,
49 standards, requirements or orders of the commissioner pro-
50 mulgated as provided in section fourteen of this article; or

51 (2) For any brewer or distributor, or any officer, agent
52 or representative of any brewer or distributor, to cancel,
53 terminate or rescind without due regard for the equities of
54 such brewer or distributor, and without just cause, any
55 franchise agreement, whether oral or written, and in the
56 case of an oral franchise agreement, whether the same was
57 entered into on or before the effective date of this section
58 and prior to July one, one thousand nine hundred seventy-one,
59 and in the case of a franchise agreement in writing, whether
60 the same was entered into on, before or subsequent to July
61 one, one thousand nine hundred seventy-one. The cancella-
62 tion, termination or rescission of any such franchise agreement
63 shall not become effective for at least ninety days after written
64 notice of such cancellation, termination or rescission has been
65 served on the affected party and the commissioner by certified
66 mail, return receipt requested: *Provided*, That said ninety-

67 day period and said notice of cancellation, termination or
68 rescission shall not apply if such cancellation, termination
69 or rescission is agreed to in writing by both the brewer and
70 the distributor involved.

71 (c) The violation of any provision of this section by any
72 brewer shall constitute grounds for the forfeiture of the bond
73 furnished by such brewer in accordance with the provisions of
74 section five of this article. Moreover, any circuit court of
75 the county in which a distributor's principal place of business
76 is located shall have the jurisdiction and power to enjoin the
77 cancellation, termination or rescission of any franchise agree-
78 ment between a brewer and such distributor, and in granting an
79 injunction to a distributor, the court shall provide that the
80 brewer so enjoined shall not supply the customers or territory
81 of the distributor while the injunction is in effect.

CHAPTER 20

(H. B. 1479—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 12, 1976; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend and reenact article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state boxing commission.

Be it enacted by the Legislature of West Virginia:

That article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. STATE BOXING COMMISSION.

- §29-5A-1. Creation of commission; members; officers; seal and rules.
- §29-5A-2. Powers and duties of secretary; penalty for false swearing, etc.; biennial reports of commission.
- §29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.
- §29-5A-4. Licenses to be in lieu of all other licenses.
- §29-5A-5. Expense of commission.

- §29-5A-6. Payment of official in charge.
- §29-5A-7. Interference with or restraining of professional boxing or exhibitions.
- §29-5A-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.
- §29-5A-9. Sanction or permit from commission.
- §29-5A-10. Sanction of commission and reports, etc., for showing of telecasts of boxing, sparring, etc.
- §29-5A-11. Intoxicating liquor.
- §29-5A-12. Length of rounds; weight of gloves.
- §29-5A-13. Cancellation of license for fake boxing, etc., exhibition; penalty for participating in such exhibition.
- §29-5A-14. Suspension, revocation, etc., of license.
- §29-5A-15. Reports by clubs to commission; bonds of applicants for license.
- §29-5A-16. Presence of members of commission or inspector at exhibitions and matches.
- §29-5A-17. Referee and judges; appointment by commission; powers, payment.
- §29-5A-18. Examination of contestants by physician; presence at contest; report to commission.
- §29-5A-19. Weight of boxers.
- §29-5A-20. Licenses for contestants, referees and managers.
- §29-5A-21. Penalty for engaging in unlawful contest.
- §29-5A-22. Penalty for violation not expressly provided for.
- §29-5A-23. Injunctive relief for violation of chapter.
- §29-5A-24. Rules and regulations governing contestants and matches.
- §29-5A-25. Special permits to American Legion and other organizations.
- §29-5A-26. Severability.

§29-5A-1. Creation of commission; members; officers; seal and rules.

- 1 Upon passage of this bill, the board created in one thousand
- 2 nine hundred thirty-one and known as the state athletic com-
- 3 mission shall become known as the state boxing commission.
- 4 The commission shall consist of three persons appointed by the
- 5 governor, no more than two of whom shall belong to the same
- 6 political party, and no two of whom shall be residents of the
- 7 same county at the same time, and who shall serve without pay.
- 8 The present members and terms of the members of the state
- 9 athletic commission shall continue as the state boxing com-
- 10 mission. At the expiration of the term of each member, his
- 11 successor shall be appointed by the governor for a term of
- 12 four years. In the event of a vacancy in said board said
- 13 vacancy shall likewise be filled by appointment by the governor
- 14 and the governor shall likewise have the power to remove any

15 commissioner at his pleasure. Any two members of the com-
16 mission shall constitute a quorum for the exercise of the power
17 or authority conferred upon it. The members of the commission
18 shall at the first meeting after their appointment elect one
19 of their number chairman of the commission, and another
20 of their number secretary of the commission, shall adopt a
21 seal for the commission, and shall make such rules for the
22 administration of their office, not inconsistent herewith, as
23 they may deem expedient; and they may hereafter amend
24 or abrogate such rules. The concurrence of at least two com-
25 missioners shall be necessary to render a choice or decision
26 of the commission.

**§29-5A-2. Powers and duties of secretary; penalty for false swear-
ing, etc.; biennial reports of commission.**

1 The office of the commission may be changed at pleasure
2 by the said commission. The commission may designate as
3 its official headquarters the residence or place of business of
4 any one of its members. It shall be the duty of the secretary
5 to keep a full and true record of all proceedings of said
6 commission, to preserve all its books, documents and papers,
7 to prepare for service such notices and other papers as
8 may be required of him by the commission, and to perform
9 such other duties as the commission may prescribe; and he
10 may at the direction of the commission issue subpoenas for
11 the attendance of witnesses before the commission with the
12 same effect as if they were issued in an action in any circuit
13 court of the state, and may administer oaths in all matters
14 pertaining to the duties of his office or connected with the
15 administration of the affairs of the commission. The sub-
16 poenas shall be on forms prescribed by the commission and
17 served by the sheriff's department of the county in which
18 the individual being subpoenaed resides. Such subpoenas
19 shall be signed by at least two members. Disobedience of
20 such subpoena and false swearing before such secretary shall
21 be attended by the same consequences and be subject to the
22 same penalties as if such disobedience or false swearing
23 occurred in an action in any circuit court of the state. The
24 commission shall make to the Legislature biennial reports of
25 their proceedings for the two years ending with the last day

26 of the preceding December, and may submit with such report,
27 such recommendations pertaining to its affairs, as to it shall
28 seem advisable.

**§29-5A-3. Commission to have sole control of boxing, etc., matches;
licenses; municipality not to tax boxing, etc., club.**

1 The commission shall have and hereby is vested with the
2 sole direction, management and control of the jurisdiction
3 over all boxing, sparring matches and exhibitions or any
4 form thereof, to be conducted, held or given with the state
5 by any club, individual, corporation or association; and no
6 boxing, sparring or exhibition shall be conducted, held or
7 given within the state except pursuant to its authority and
8 held in accordance with this article. The commission may,
9 in its discretion, issue and at its pleasure, revoke the license
10 to conduct, hold, or give boxing or sparring or exhibitions
11 to any club, corporation, association or individual. Every
12 license shall be subject to such rules and regulations and
13 amendments thereto as the commission may prescribe. Every
14 application for a license, as herein provided for, shall be on
15 a blank form provided by the commission. No promoter's
16 license shall be granted to any club, corporation, association
17 or individual, unless the signer of the application be a bona
18 fide resident of the state of West Virginia. Upon application
19 of such promoter's license, the promoter shall pay a state
20 license fee of one hundred twenty-five dollars for one year.
21 Such fee shall be in the form of a certified check or money
22 order and shall be issued to the treasurer of the state of
23 West Virginia to be deposited in the general fund. Should
24 such license not be granted, the treasurer shall refund the
25 full amount. Nonprofit chartered and charitable organizations
26 shall be exempt from this license fee for all amateur events.
27 No municipal corporation shall impose any license tax on
28 such boxing, sparring or exhibition clubs, notwithstanding
29 the provisions of any section of the code respecting municipal
30 taxes and licenses. The granting of such license to such club
31 by the commission, or the holding of such license by such
32 club, individual, corporation or association, shall not prevent
33 the commission from canceling or revoking the license to
34 conduct such an event, as hereinbefore provided.

§29-5A-4. Licenses to be in lieu of all other licenses.

1 The licenses herein imposed shall be in lieu of all other
2 licenses or license taxes of the state of West Virginia, and
3 no county, city, town or other municipality or other political
4 subdivision of the state of West Virginia shall be empowered
5 to levy or impose any license or license tax on any such
6 person engaged in the business of conducting boxing or
7 sparring matches and exhibitions under the jurisdiction of and
8 being licensed by the commission.

§29-5A-5. Expense of commission.

1 On or before December thirty-one of each year, the secre-
2 tary of the commission shall present to the governor pro-
3 jected expenses for the following year. Such projections shall
4 include all expenses of the commission and its official head-
5 quarters. Necessary expenses incurred by the commission shall
6 be submitted on a standard expense form to the treasurer of
7 the state of West Virginia to be paid from the general fund.
8 Such expenses shall not exceed five thousand five hundred
9 dollars per year.

§29-5A-6. Payment of official in charge.

1 The deputy, inspector or official designated by the com-
2 mission to be in charge of a boxing event shall be paid by the
3 promoter at a rate of twenty-five dollars for each weigh-in
4 ceremony and twenty-five dollars for each day of bouts. If
5 a weigh-in occurs within three hours before the boxing bouts
6 are scheduled to begin, he will be paid only twenty-five dollars
7 once for that particular night or day's events.

§29-5A-7. Interference with or restraining of professional boxing or exhibitions.

1 No person or persons, club, organization or corporation
2 shall, except in accordance with law, interfere with or re-
3 strain, or attempt to interfere with or restrain, by any act,
4 threat or otherwise, either within or without this state, the
5 putting on or the conduct of any professional boxing match
6 or exhibition of this state.

§29-5A-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.

1 The commission, at its discretion, may issue a license to
2 promote, conduct or hold boxing, sparring matches and exhi-
3 bitions to any person, corporation, association, club or or-
4 ganization eligible for a license under this chapter.

5 Before being granted a license, or the renewal of such
6 license, the applicant must establish to the satisfaction of the
7 commission that he:

8 (a) Is skilled, or has knowledge, in the profession of boxing;

9 (b) Is of good moral character;

10 (c) Is physically fit and mentally sound;

11 (d) Will conduct his business in the best interest and wel-
12 fare of the public, preserving the safety and health of partici-
13 pants and the best interests of professional boxing generally;

14 (e) Will adhere to and comply with all the rules and regula-
15 tions of the commission pertaining to such license.

16 In the case of a corporate applicant, these factors shall per-
17 tain to its officers, directors, principal stockholders and em-
18 ployees.

19 Every license and licensee shall be subject to such rules and
20 regulations, and amendments thereof, as the commission may
21 prescribe.

§29-5A-9. Sanction or permit from commission.

1 No boxing, sparring or exhibitions shall be conducted by
2 any individual, club, organization or corporation having a
3 license to conduct any such exhibitions in this state except
4 by a sanction or permit from the commission.

§29-5A-10. Sanction of commission and reports, etc., for showing of telecasts of boxing, sparring, etc.

1 Every club, corporation or association holding, showing or
2 exhibiting a simultaneous telecast of any live, current or
3 spontaneous boxing, sparring or exhibition or performance on a
4 closed circuit telecast or subscription television viewed within

5 this state, whether originating in this state or another state, and
6 for which an admission charge is made shall obtain a permit
7 from the commission, and shall within twenty-four hours after
8 the termination of such showing, furnish the commission a
9 written report, duly verified by one of its officers, showing the
10 number of tickets sold for such showing and the amount of the
11 gross proceeds thereof, and such other matters as the com-
12 mission may prescribe.

§29-5A-11. Intoxicating liquor.

1 No intoxicating liquor shall be given away, sold or offered
2 for sale in any building or part thereof, in which boxing or
3 sparring exhibitions are being conducted.

§29-5A-12. Length of rounds; weight of gloves.

1 No boxing or sparring match or exhibition shall be more
2 than fifteen rounds of three minutes each in length with
3 intermission of one minute each between rounds; and the
4 contestants shall wear, during such contests, gloves weighing
5 at least ten ounces.

**§29-5A-13. Cancellation of license for fake boxing, etc., exhibition;
penalty for participating in such exhibition.**

1 Any club, corporation, association or individual which may
2 conduct, hold or give or participate in any sham or fake box-
3 ing, sparring or exhibition shall thereby forfeit its license
4 issued in accordance with the provisions of this article, which
5 shall thereupon be, by the commission, canceled and de-
6 clared void; and it shall not be entitled to receive another
7 such license or any license pursuant to the provisions of
8 this article, nor shall any license thereafter be granted to any
9 club, corporation, association or individual, including among
10 its members, directors, partners or stockholders, any mem-
11 ber, director, partner or stockholder of the club, corpora-
12 tion, association or individual whose license has been so
13 forfeited. Any contestant who shall participate in any sham
14 or fake boxing, sparring or exhibition, and any other person
15 whatsoever who shall in any manner be connected with the
16 arranging, planning, holding, conducting or giving of any

17 such sham or fake boxing, sparring or exhibition shall be
18 guilty of a misdemeanor, and, shall upon conviction thereof, be
19 fined not less than five hundred dollars, nor more than one
20 thousand dollars, or be confined in jail for a period of not
21 less than six months, nor more than one year or both;
22 and any contestant so participating shall be further totally
23 disqualified from further admission or participation in any
24 boxing or sparring held or given by any club, corporation,
25 association or individual duly licensed for said purpose.

§29-5A-14. Suspension, revocation, etc., of license.

1 The commission shall have the additional authority and
2 power to suspend, revoke or place on probation the license of
3 any licensee licensed under this chapter, who in the discretion
4 of the commission:

5 (a) Is guilty of failure to obey any lawful order of the
6 commission, the secretary or any inspector thereof;

7 (b) Is guilty of gross immorality;

8 (c) Is unfit or incompetent by reason of negligence;

9 (d) Is guilty of violating any provision of this chapter or
10 rules and regulations of the commission;

11 (e) Has committed fraud or deceit in securing a license for
12 himself or another;

13 (f) Has been convicted of a felony or misdemeanor in-
14 volving moral turpitude in any jurisdiction within one
15 year preceding the suspension or revocation and such con-
16 viction not previously reported to the commission by said
17 licensee;

18 (g) Is an habitual drunkard or addicted to the use of
19 narcotics;

20 (h) Is or has become mentally incompetent;

21 (i) Is or has been guilty of unprofessional or unethical
22 conduct, or such conduct as to require a suspension or
23 revocation of license in the interest of the public;

24 (j) Has failed to furnish the proper party a copy of
25 any contract or statement required by this chapter or the

26 rules and regulations promulgated hereunder, or has breached
27 such a contract;

28 (k) Has loaned or permitted another person to use
29 his license, or has borrowed or used the license of
30 another;

31 (l) Has failed to maintain in force the bond required by
32 this chapter;

33 (m) Has by act or omission conducted himself in a man-
34 ner which would tend to be detrimental to the best interests of
35 boxing generally, or to the public interest and general welfare;

36 (n) Has been disciplined in any manner by the boxing
37 commission or similar agency or body of any jurisdiction;

38 (o) Has failed to pay a fine or forfeiture imposed by this
39 chapter;

40 (p) Has, either within or without this state, by any act,
41 threat, statement or otherwise, restrained, hindered, inter-
42 fered with or prevented another promoter, club, association
43 or booking agent, or has attempted, either within or without
44 this state, in any such manner to restrain, hinder, interfere
45 with or prevent another promoter, club, association or booking
46 agent from presenting any boxing match or exhibition within
47 or without the state of West Virginia;

48 (q) Has, either within or without this state, engaged, di-
49 rectly or indirectly, in restraints or monopolies or taken any
50 action tending to create or establish restraints or monopolies
51 or conspired with others to restrain any person or persons from
52 participating or competing in any boxing match or exhibition
53 for any promoter, club, association or booking agent.

**§29-5A-15. Reports by clubs to commission; bonds of applicants
for license.**

1 Every club, corporation, association or individual which
2 may hold or exercise any of the privileges conferred by this
3 article, shall within twenty-four hours after the determination
4 of any contest, furnish to the commission a written report, duly
5 verified by one of its officers, showing the number of tickets
6 sold for such contest and the amount of the gross proceeds

7 thereof, and such other matters as the commission may pre-
8 scribe. Before any license shall be granted to any club, cor-
9 poration, association or individual to conduct, hold or give
10 any boxing, sparring or exhibition, such applicant therefor
11 shall execute and file with the commission a surety bond in the
12 sum of which shall be at the discretion of said commission, to
13 be approved as to form and the sufficiency of the security
14 thereon by the said commission. Such bond shall cover all
15 purses, awards and payments to be paid by the promoter.

§29-5A-16. Presence of members of commission or inspector at exhibitions and matches.

1 Each member of the commission shall have the privilege of
2 being present at all exhibitions and matches without charge
3 therefor, and shall, when present, see that the rules are strictly
4 observed, and may be present at the counting of the gross
5 receipts; and in the event that no member of the commission
6 can be present, the commission may appoint an inspector to
7 be present representing said commission, which inspector shall
8 have the same privilege hereby conferred upon a member of
9 the commission; and said inspector shall immediately mail
10 to the commission the official box office statement received
11 by him from the officers of the club.

§29-5A-17. Referee and judges; appointment by commission; powers, payment.

1 The chief official of the boxing match or exhibition shall
2 be the referee. The referee and judges shall be appointed by
3 the commission, and shall receive from the commission a
4 card authorizing them to act as such, and no club shall
5 employ or permit anyone to act as referee except one holding
6 such card of authorization from the commission. The referee
7 shall have general supervision and control over the match
8 or exhibition and shall be paid by the promoter twenty-five
9 dollars for each day or night's services. The referee shall
10 be limited to refereeing a maximum of thirty rounds per day
11 or night unless special consent is given by the commission.

§29-5A-18. Examination of contestants by physician; presence at contest; report to commission.

1 In any boxing or exhibition match, each contestant must be
2 examined by a qualified physician prior to entering the ring.
3 The physician shall certify in writing over his signature, as
4 to contestant's physical condition to engage in such contest.
5 Qualified technicians may assist the physician in the exami-
6 nations, and a physician shall be in attendance during any
7 boxing bouts prepared to deal with any emergency which
8 may arise. But in the event that said physician is convinced
9 of the unfitness of either of the contestants to enter the
10 contest, he shall at once certify such opinion to the club,
11 corporation, association or individual under whose manage-
12 ment the contest is conducted, and it shall thereupon be
13 unlawful for said club, corporation, association or individual
14 to proceed with such. Whenever a participant, in the
15 opinion of the physician, is unable to continue in a boxing
16 match, the physician may stop the bout.

§29-5A-19. Weight of boxers.

1 No boxer shall be permitted to contest against an opponent
2 ten pounds heavier than himself when the weight of either
3 contestant is less than one hundred fifty pounds.

§29-5A-20. Licenses for contestants, referees and managers.

1 No professional contestant, referee or professional manager
2 shall be permitted to take part in any boxing contest or
3 exhibition unless holding a license from the state, said
4 license to be issued by the commission upon payment of five
5 dollars a year for contestants and referees and three dollars
6 a year for a manager. Such fees shall accompany the appli-
7 cation and shall be in the form of a certified check or money
8 order and shall be issued to the treasurer of the state of
9 West Virginia to be deposited in the general fund. Should
10 such license not be granted, the treasurer shall refund the
11 full amount.

§29-5A-21. Penalty for engaging in unlawful contest.

1 Any person who shall engage in a boxing contest with
2 another person for money or other such things of value, or for
3 any championship, when an admission fee is charged, either

- 4 directly or indirectly in this state, except when such contest is
- 5 held in compliance with this article, shall be deemed guilty of a
- 6 misdemeanor, and, upon conviction thereof, shall be fined not
- 7 less than fifty dollars, and not more than five hundred dollars.

§29-5A-22. Penalty for violation not expressly provided for.

- 1 If any person shall violate any provision of this article, for
- 2 which violation a penalty is not here expressly provided, he
- 3 shall be guilty of a misdemeanor, and, upon conviction thereof,
- 4 shall be fined not less than fifty dollars, nor more than five
- 5 hundred dollars.

§29-5A-23. Injunctive relief for violation of chapter.

- 1 In the event of violation of any provision of this chapter,
- 2 in addition to any other remedy, the commission may apply to
- 3 any court of record in the state of West Virginia for relief
- 4 without being compelled to allege or prove that any adequate
- 5 remedy at law does not exist.

§29-5A-24. Rules and regulations governing contestants and matches.

- 1 The commission is empowered to prescribe and promulgate
- 2 such rules and regulations as it may deem desirable, not in
- 3 conflict with this chapter, governing boxers and boxing con-
- 4 tests, matches and exhibitions.

§29-5A-25. Special permits to American Legion and other organizations.

- 1 Nothing in this article contained shall be construed to render
- 2 unlawful boxing, sparring or exhibition contests for any
- 3 charitable purpose, the American Legion, National Guard,
- 4 Veterans of Foreign Wars, or other charitable organizations, but
- 5 a permit shall be obtained from the commission. No charge
- 6 shall be made for such permit.

§29-5A-26. Severability.

- 1 If any section, clause, provision or portion of this article
- 2 shall be held to be invalid or unconstitutional by any court of
- 3 competent jurisdiction, such holding shall not affect any other
- 4 section, clause or provision of this article which is not in and
- 5 of itself unconstitutional.

CHAPTER 21

(Com. Sub. for H. B. 1043—By Mr. Speaker, Mr. McManus)

[Passed March 12, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to the creation of a capitol building commission; providing for composition, terms of members; vacancies; meetings; decisions of commission; officers; reimbursement of expenses of members; and powers and duties generally.

Be it enacted by the Legislature of West Virginia:

That chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eight, to read as follows:

ARTICLE 8. CAPITOL BUILDING COMMISSION.

- §4-8-1. Creation; composition; qualifications.
- §4-8-2. Terms of members; vacancies; meetings; decisions of commission.
- §4-8-3. Officers; expenses.
- §4-8-4. Powers and duties generally.
- §4-8-5. Contracts and changes requiring commission approval.

§4-8-1. Creation; composition; qualifications.

- 1 There is hereby created a capitol building commission,
- 2 hereinafter referred to as the commission, which shall be
- 3 composed of five members who shall be appointed by the
- 4 governor with the advice and consent of the Senate on the
- 5 first day of July, one thousand nine hundred seventy-six,
- 6 plus the commissioner of the department of finance and ad-
- 7 ministration who shall be a nonvoting member. No more than
- 8 three members shall be of the same political party. One mem-
- 9 ber shall be an architect selected from three persons recom-
- 10 mended by the board of architects, one member shall be a
- 11 registered professional engineer selected from three persons
- 12 recommended by the board of engineers, one member shall be
- 13 selected from three persons who are interested in the historical

14 beauty, value and preservation of the capitol building recom-
15 mended by the state board of archives and history and two
16 members shall be selected from the public at large.

§4-8-2. Terms of members; vacancies; meetings; decisions of commission.

1 Members shall be appointed for terms of four years and may
2 be reappointed at the expiration of their terms. In the event of
3 a vacancy, an appointment shall be made to fill the unexpired
4 term. Whenever the approval of the commission is requested,
5 as required by sections four and five of this article, the com-
6 mission shall meet and render its decision, in writing, within
7 ninety days of the filing with the commission of such request.

§4-8-3. Officers; expenses.

1 The capitol building commission shall organize by electing
2 a chairman, a vice chairman and a secretary from among the
3 members of the commission. The members of the commission
4 shall serve without compensation and shall be reimbursed for
5 such necessary travel expenses, subsistence and other reason-
6 able expenses as may be actually incurred by them in the
7 performance of their duties, all to be paid by the joint com-
8 mittee on government and finance.

§4-8-4. Powers and duties generally.

1 The capitol building commission shall review and approve
2 or reject all plans recommending substantial physical changes
3 inside the state capitol building or surrounding complex. The
4 approval of the commission is mandatory before a contract
5 may be let for work which constitutes a substantial physical
6 change inside the capitol building or surrounding complex, or
7 before changes are started if the work is not done under a con-
8 tract. As used in this article, the surrounding complex shall
9 include the governor's mansion and other buildings used by the
10 governor as part of his residence, the state science and cultural
11 center, all state office buildings located in the immediate vi-
12 cinity of the state capitol, and the roadways, structures and
13 facilities which are incidental to such buildings. As used in
14 this article, substantial physical change shall include but not
15 be limited to permanent physical changes that alter the ap-

16 pearance of the public areas of the capitol building and sur-
17 rounding complex. The commissioner of the department of
18 finance and administration shall promulgate rules and regu-
19 lations, which rules and regulations shall be subject to the
20 approval of the capitol building commission, to implement the
21 provisions of this article.

§4-8-5. Contracts and changes requiring commission approval.

1 No contract or contracts which will result in physical changes
2 to the capitol building or any approaches, structures or facili-
3 ties incidental thereto shall be let, nor shall any physical
4 changes be made not requiring a contract, until approval of
5 the commission has been obtained.

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CHAPTER 22

(Com. Sub. for H. B. 1388—By Mr. Sattes)

[Passed May 15, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to civil service for state employees generally, dismissals and demotions of employees in the classified service; hearings upon such dismissals or demotions; the burden of proof with respect to such hearings; authorizing certain action by the commission following such hearings; and judicial review of any decision following such hearings.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-13. Appeals by employees to commission; hearings; review by court of appeals.

1 Any employee in the classified service who is dismissed or

2 demoted after completing his probationary period of service or
3 who is suspended for more than thirty days in any one year,
4 may, within thirty days after such dismissal, demotion or sus-
5 pension, appeal to the commission for review thereof. Upon
6 such review, both the appealing employee and the appointing
7 authority whose action is reviewed shall have the right to be
8 heard publicly and to present evidentiary facts. At the hearing
9 of such appeals, technical rules of evidence shall not apply.
10 At any such hearing, the burden of proof will be upon the
11 appointing authority to establish that the dismissal or demotion
12 was proper in all respects and that such dismissal or demotion
13 was not arbitrary or capricious. Such burden shall remain with
14 the appointing authority throughout every stage of such hear-
15 ing. If the commission finds that the action complained of was
16 taken by the appointing authority without good cause, the
17 employee shall be reinstated to his former position or a position
18 of like status and pay, without loss of pay for the period of his
19 suspension, and awarded his reasonable and necessary attorneys
20 fees expended therein, such fees to be paid by the appointing
21 authority. If the commission finds that the action complained
22 of and taken by the appointing authority was too severe but
23 was with good cause, the commission may provide for such
24 other remedy or remedies, as may be deemed appropriate
25 and in the best interest of the parties. The commission
26 shall expressly have the authority by order to provide for such
27 remedies as it may deem to be appropriate after it has made
28 a complete review of the circumstances of each individual
29 case and such remedies shall include, but not be limited to, the
30 restoration of all or part of an individual's back pay or wages
31 for the period of the suspension or reinstatement of an indi-
32 vidual to his former position or a position of like status and
33 pay or reemployment to any other position which in the judg-
34 ment of the commission is in the best interest of the parties or
35 any combination of such remedies. When any employee is
36 dismissed and not reinstated after such appeal the commis-
37 sion in its discretion may direct that his name be placed on an
38 appropriate reemployment list for employment in any similar
39 position other than the one from which he has been removed.
40 Any final action or decision taken or made hereunder shall be
41 subject to review by the supreme court of appeals, if appeal is
42 made within sixty days of the action or decision complained of.

CHAPTER 23

(S. B. 450—By Mr. Savilla, Mr. Hinkle and Mr. Steptoe)

[Passed March 1, 1976; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of public institutions and the sinking fund commission to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commodities
3 and services rendered by certain claimants herein and has
4 considered claims against the state, the department of
5 public institutions and the sinking fund commission,
6 agencies thereof, which have arisen due to over-expendi-
7 tures of departmental appropriations by officers of such
8 state spending units, such claims having been previously
9 considered by the court of claims which also found that
10 the state has received the benefit of the commodities and
11 services rendered by each claimant, but were denied by
12 the court of claims on the purely statutory grounds that
13 to allow such claims would be condoning illegal acts
14 contrary to the laws of the state. The Legislature, pur-
15 suant to its findings of fact and also by the adoption of
16 the findings of fact by the court of claims as its own, and,
17 while not condoning such illegal acts, hereby declares it to
18 be the moral obligation of the state to pay each such claim
19 in the amount specified below, and directs the auditor to
20 issue warrants upon receipt of a properly executed
21 requisition supported by an itemized invoice, statement or
22 other satisfactory document as required by section ten,

23 article three, chapter twelve of the code of West Virginia,
24 one thousand nine hundred thirty-one, as amended, for
25 the payment thereof out of any fund appropriated and
26 available for the purpose.

27 (a) Claims against the department of public
28 institutions:

29 (To be paid from General Revenue Fund)

30	(1) Drs. Butler, Aceto & Assoc., Inc. _____	\$ 8.00
31	(2) Xerox Corporation _____	\$ 798.46
32	(3) Mellon-Stuart Company _____	\$ 5,919.64
33	(4) West Virginia State Industries _____	\$ 3,857.84
34	(5) Kirk's Photo-Art Center _____	\$ 452.19
35	(6) Goldsmit-Black, Inc. _____	\$ 1,407.75
36	(7) Ashland Chemical Company _____	\$ 51.80
36a	(8) Mountaineer Motel, Inc. _____	\$ 250.79

37 (b) Claims against the sinking fund commission:

38	(1) International Business Machines Cor-	
39	poration _____	\$ 61.40
40	TOTAL _____	\$12,807.87

CHAPTER 24

(S. B. 457—By Mr. Savilla, Mr. Hinkle and Mr. Steptoe)

[Passed February 28, 1976; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the nonintoxicating beer commission; department of finance and administration; department of natural resources; depart-

ment of mental health; department of public institutions; state auditor; department of commerce; department of public safety; board of vocational education, division of vocational rehabilitation; department of highways; rehabilitation environmental action program; alcohol beverage control commissioner; workmen's compensation fund; secretary of state; office of emergency services, and department of motor vehicles to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the court of claims
3 concerning various claims against the state and agencies
4 thereof, and in respect to each of the following claims
5 the Legislature adopts those findings of fact as its own,
6 and hereby declares it to be the moral obligation of the
7 state to pay each claim in the amount specified below,
8 and directs the auditor to issue warrants for the payment
9 thereof out of any fund appropriated and available for
10 the purpose.

11 (a) Claims against the nonintoxicating beer
12 commission: (To be paid from General
13 Revenue Fund)

14 (1) The F. & M. Schaefer Brewing Com-
15 pany _____ \$ 24,474.67

16 (2) The Queen City Brewing Co. _____ \$ 8,974.82

17 (b) Claims against the department of finance
18 and administration: (To be paid from
19 General Revenue Fund)

20 (1) Ronald L. Cook _____ \$ 4,375.00

21 (c) Claims against the department of natural
22 resources: (To be paid from General
23 Revenue Fund)

24 (1) Larry James _____ \$ 1,500.00

25 (d) Claims against the department of mental
26 health: (To be paid from General Reve-
27 nue Fund)

28 (1) James R. Clowser _____ \$ 1,020.00

29	(2) Tabitha V. Partlow _____	\$ 57.88
30	(3) Inland Mutual Insurance Company,	
31	subrogee of Tabitha V. Partlow_____	\$ 342.83
32	(4) J. Wilbur Swisher and Alice V. Swisher d/b/a	
33	Swisher's Feed and Supply Company_	\$ 2,580.76
34	(5) Jordan, McGettigan & Yule_____	\$ 5,942.20
35	(6) Pfizer, Inc. _____	\$ 473.23
36	(7) American Can Company _____	\$ 1,125.85
37	(8) Parke, Davis & Company _____	\$ 545.96
38	(e) Claims against the department of public	
39	institutions: (To be paid from General	
40	Revenue Fund)	
41	(1) J. J. Englert Company _____	\$ 5,834.40
42	(2) Shen K. Wang, M.D. _____	\$ 15,300.00
43	(3) Physicians Fee Office _____	\$ 111.92
44	(4) Xerox Corporation _____	\$ 1,166.18
45	(5) Ashland Chemical Company_____	\$ 249.65
46	(6) Valley Welding Supply Company_____	\$ 25.70
47	(f) Claims against the state auditor: (To be	
48	paid from General Revenue Fund)	
49	(1) Archie Day, Sheriff_____	\$ 18.00
50	(2) D. A. Wright, Sheriff_____	\$ 762.00
51	(3) Russell E. Duvernoy &	
52	Henry Todd Duvernoy_____	\$ 775.00
53	(4) Frank A. Rocchio, Sheriff_____	\$ 16.00
54	(g) Claims against the department of com-	
55	merce: (To be paid from General Reve-	
56	nue Fund)	
57	(1) Ski South Magazine_____	\$ 679.50
58	(h) Claims against the department of public	
59	safety: (To be paid from General Reve-	
60	nue Fund)	
61	(1) Associated Dry Goods d/b/a	
62	The Diamond Department Store_____	\$ 441.96

63	(i)	Claims against the board of vocational edu-		
64		cation, division of vocational rehabilita-		
65		tion: (To be paid from General Revenue		
66		Fund)		
67	(1)	Richard D. Kitching, M.D.....	\$	405.00
68	(2)	Charleston Area Medical Center, Inc....	\$	2,972.37
69	(j)	Claims against the department of high-		
70		ways: (To be paid from State Road		
71		Fund)		
72	(1)	Mrs. Samuel Kelly.....	\$	58.00
73	(2)	The Chesapeake and Potomac Tele-		
74		phone Company of West Virginia....	\$	3,856.86
75	(3)	Daniel Crockett	\$	257.96
76	(4)	Larry W. Lohan and Pamela Lohan....	\$	38.37
77	(5)	Robert Douglas Baker.....	\$	35.00
78	(6)	Mark A. Melrose, Executor of the		
79		Estate of J. J. Melrose, deceased, and		
80		Frank R. Melrose.....	\$	3,000.00
81	(7)	Bobby Shafer	\$	305.85
82	(8)	Ryan, Incorporated of Wisconsin.....	\$	40,000.00
83	(9)	Kenneth E. Plants	\$	14,500.00
84	(10)	Gerald E. Tinsley	\$	163.10
85	(11)	Robert L. Jefferson	\$	100.00
86	(12)	Wanda M. Gannon	\$	3,450.00
87	(13)	Thomas Edison Hale	\$	8,250.00
88	(14)	Larry Lee Wingate	\$	11,000.00
89	(15)	Everett L. Dunbrack	\$	200.00
90	(16)	Ronald E. Ferguson	\$	210.73
91	(17)	Travelers Insurance Co., subrogee of		
92		William R. Beckner	\$	78.28
93	(18)	Prudential Property & Casualty Insur-		
94		ance Co., subrogee of Beverly J.		
95		Maxwell	\$	194.67
96	(19)	Randy Cooper	\$	71.44
97	(20)	State Farm Mutual Automobile Insur-		
98		ance Co., subrogee of Thelma		
99		Criner	\$	195.70

100	(21) Maryland Casualty Co., subrogee of	
101	Michael E. Heitz _____	\$ 134.88
102	(22) Michael E. Heitz _____	\$ 100.00
103	(23) Westfield Insurance Co., subrogee of	
104	David Sago _____	\$ 106.02
105	(24) Buckeye Union Insurance Co., subrogee	
106	of Raymond L. Maddy _____	\$ 207.93
107	(25) Kenneth S. Kayser _____	\$ 100.00
108	(26) Clyde Speer and Mildred Speer _____	\$ 328.60
109	(27) Patricia G. McFann _____	\$ 61.14
110	(28) Hershel Ray Wiley _____	\$ 300.00
111	(29) Paul G. Nohe & June D. Nohe _____	\$ 100.00
112	(30) Roy E. Brassfield, Jr. _____	\$ 69.21
113	(31) Helen Cremeans _____	\$ 391.45
114	(32) James E. White _____	\$ 43.26
115	(33) Carmie Riddle _____	\$ 87.55
116	(34) Motors Insurance Corp., subrogee of	
117	Quincy E. Holstein _____	\$ 228.00
118	(35) Fred H. Gregory _____	\$ 35.63
119	(36) Coal River Public Service District _____	\$ 201.00
120	(37) L. M. Casdorph _____	\$ 61.29
121	(38) Mr. & Mrs. T. E. Reed _____	\$ 600.00
122	(39) David R. Dietz _____	\$ 82.40
123	(40) Tygart Valley Telephone Company _____	\$ 109.79
124	(41) Dana H. Carney _____	\$ 67.61
125	(42) H. Ronald Harris _____	\$ 78.92
126	(43) T. A. Galyean, Jr., Ann T. Galyean, his	
127	wife, John G. Anderson, Trustee, and	
128	Huntington Federal Savings and	
129	Loan Association _____	\$ 7,500.00
130	(44) Clarke W. Greene _____	\$ 183.95
131	(45) James R. Lantz _____	\$ 43.30
132	(46) Velva K. Corzine _____	\$ 221.98
133	(47) Mrs. W. G. Via _____	\$ 55.10
134	(48) Monongahela Power Company _____	\$ 189.79
135	(49) Samuel Miller _____	\$ 123.60
136	(50) Harry C. Henderson _____	\$ 6,600.00

137	(51) Clyde M. Ellison	\$ 25.00
138	(52) James M. Duffy	\$ 25.00
139	(53) John L. Cooper	\$ 25.00
140	(54) Norfolk & Western Railway Company..	\$ 1,258.29
141	(55) Opal Baker Thomas & Elsey Thomas....	\$ 1,920.00
142	(k) Claims against the rehabilitation environ-	
143	mental action program: (To be paid from	
144	special account in State Road Fund)	
145	(1) Lena Solomon	\$ 500.00
146	(2) Edward H. Stanley	\$ 200.00
147	(3) Geneva Marie Burch	\$ 150.00
148	(l) Claims against the alcohol beverage control	
149	commissioner: (To be paid from Special	
150	Revenue Fund)	
151	(1) Maryland Casualty Co.	\$ 2,500.00
152	(m) Claims against the workmen's compensa-	
153	tion fund: (To be paid from Workmen's	
154	Compensation Fund)	
155	(1) Leonard Johnson Funeral Home, Inc....	\$ 1,200.00
156	(n) Claims against the secretary of state: (To	
157	be paid from General Revenue Fund)	
158	(1) International Business Machines	
159	Corporation	\$ 70.23
160	(o) Claims against the office of emergency	
161	services: (To be paid from General	
162	Revenue Fund)	
163	(1) Jay H. Cadle, d/b/a Cadle Sanitary	
164	Service	\$ 10,492.50
165	(p) Claims against the department of motor	
166	vehicles: (To be paid from State Road	
167	Fund)	
168	(1) Mid-Mountain Mack, Inc.	\$ 2,088.02
169	Total of all claims	
		\$205,003.08
170	The Legislature finds that the above moral obligations	
171	and the appropriations made in satisfaction thereof shall	

172 be the full compensation for all claimants, and that prior
173 to the payments to any claimant provided for in this bill,
174 the court of claims shall receive a release from said
175 claimant releasing any and all claims for moral obliga-
176 tions arising from the matters considered by the Legisla-
177 ture in the finding of the moral obligations and the
178 making of the appropriations of said claimant. The court
179 of claims shall deliver all releases obtained from claim-
180 ants to the department against which the claim was
181 allowed.

CHAPTER 25

(Com. Sub. for H. B. 1034—By Mrs. Spears and Mr. Satten)

[Passed March 12, 1976; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to venue for certain suits and actions; venue in actions seeking injunctive or mandamus relief involving the taking, title, or collection for or prevention of damage to real property.

Be it enacted by the Legislature of West Virginia:

That section two, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-2. Venue for certain suits and actions.

1 (a) The following proceedings shall be brought and pro-
2 secuted only in the circuit court of Kanawha County:

3 (1) Any suit in which the governor, any other state officer,
4 or a state agency is made a party defendant, except as
5 garnishee or sugstee.

6 (2) Any suit attempting to enjoin or otherwise suspend
7 or affect a judgment or decree on behalf of the state obtained
8 in any circuit court.

9 (b) Any proceeding for injunctive or mandamus relief
10 involving the taking, title, or collection for or prevention of
11 damage to real property may be brought and presented in the
12 circuit court of the county in which the real property affected
13 is situate.

14 This section shall apply only to such proceedings as are not
15 prohibited by the constitutional immunity of the state from suit
16 under section thirty-five, article six of the constitution of the
17 state.

CHAPTER 26

(Com. Sub. for S. B. 193—By Mr. Palumbo and Mr. Steptoe)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections twenty-five and ninety-seven, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new section twenty-five; and to amend and reenact sections six, twenty, twenty-three, twenty-seven, thirty, seventy-three, one hundred nine and one hundred forty of said article one, relating to corporations; business and nonprofit corporations; definitions; quorums of shareholders, members and directors; director conflicts of interest; contents of article of incorporation; organizational meetings; action without meeting; article of amendment; and removal of directors.

Be it enacted by the Legislature of West Virginia:

That sections twenty-five and ninety-seven, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and a new section twenty-five be enacted in lieu thereof; and that sections six, twenty, twenty-three, twenty-seven, thirty, seventy-three, one

hundred nine and one hundred forty of said article one be amended and reenacted to read as follows:

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

- §31-1-6. Definitions.
- §31-1-20. Quorum of shareholders or members.
- §31-1-23. Quorum of directors.
- §31-1-25. Director conflicts of interest.
- §31-1-27. Articles of incorporation; contents; matters not required to be set forth; inconsistencies with bylaws; acknowledgment.
- §31-1-30. Organizational meeting; notice, waiver of notice.
- §31-1-73. Action by shareholders, members or directors without a meeting.
- §31-1-109. Articles of amendment.
- §31-1-140. Removal of directors.

§31-1-6. Definitions.

1 As used in this article, unless the context otherwise
2 requires a different meaning, the term:

3 (a) "Articles of incorporation" means the original
4 or restated articles of incorporation or articles of con-
5 solidation and all amendments thereto including articles
6 of merger.

7 (b) "Authorized shares" means the shares of all
8 classes which a business corporation is authorized to
9 issue.

10 (c) "Business corporation" means a corporation or-
11 ganized for profit.

12 (d) "Bylaws" means the code or codes of rules adopted
13 for the regulation or management of the affairs of the
14 corporation, irrespective of the name or names by which
15 such rules are designated.

16 (e) "Capital surplus" means the entire surplus of
17 a business corporation other than its earned surplus.

18 (f) As used in part one and part two of this article,
19 "corporation" or "domestic corporation" means a busi-
20 ness corporation or a nonprofit corporation, subject to
21 the provisions of this article, except a foreign corpora-
22 tion.

23 (g) "Director or directors" or "board of directors"
24 shall include those who are vested with the management

25 of the affairs of the corporation, by whatever name they
26 may be called.

27 (h) "Earned surplus" means the portion of the sur-
28 plus of a business corporation equal to the balance of
29 its net profits, income, gains and losses from the date
30 of incorporation, or from the latest date when a deficit
31 was eliminated by an application of its capital surplus
32 or stated capital or otherwise, after deducting subse-
33 quent distributions to shareholders and transfers to
34 stated capital and capital surplus to the extent such
35 distributions and transfers are made out of earned sur-
36 plus. Earned surplus shall include also any portions
37 of surplus allocated to earned surplus in mergers, con-
38 solidations or acquisitions of all or substantially all
39 of the outstanding shares or of the property and assets
40 of another corporation, domestic or foreign.

41 (i) "Employee" includes officers but not directors.
42 A director may accept duties which make him also an
43 employee.

44 (j) As used in part one and part two of this article,
45 "foreign corporation" means a business corporation or
46 nonprofit corporation organized under laws other than
47 the laws of this state for a purpose or purposes for
48 which a corporation may be organized under this ar-
49 ticle.

50 (k) "Insolvent" means inability of a corporation to
51 pay its debts as they become due in the usual course of
52 its business.

53 (l) "Member" means one having membership in a
54 nonprofit corporation in accordance with the provisions
55 of its articles of incorporation or bylaws.

56 (m) "Net assets" means the amount by which the
57 total assets of a corporation exceed the total debt of the
58 corporation.

59 (n) "Nonprofit corporation" means a corporation no
60 part of the income or profit of which is distributable
61 to its shareholders, members, directors or officers.

62 (o) "Shareholder" means one who is a holder of record
63 of shares in a corporation and may include the term
64 "member."

65 (p) "Shares" means the units into which the pro-
66 prietary interests in a corporation are divided.

67 (q) "Stated capital" means, at any particular time,
68 the sum of (1) the par value of all shares of a business
69 corporation having a par value that have been issued,
70 (2) the amount of the consideration received by a busi-
71 ness corporation for all shares of such corporation with-
72 out par value that have been issued, except such part of
73 the consideration therefor as may have been allocated
74 to capital surplus in a manner permitted by law, and
75 (3) such amounts not included in clauses (1) and (2)
76 of this subdivision as have been transferred to stated
77 capital of such corporation, whether upon the issue of
78 shares as a share dividend or otherwise, minus all re-
79 ductions from such sums as have been effected in a
80 manner permitted by law. Irrespective of the manner of
81 designation thereof by the laws under which a foreign
82 corporation is organized, the stated capital of a foreign
83 corporation shall be determined on the same basis and
84 in the same manner as the stated capital of a domestic
85 corporation, for the purpose of computing fees, franchise
86 taxes and other charges prescribed by law.

87 (r) "Subscriber" means one who subscribes for shares
88 in a corporation, whether before or after incorporation.

89 (s) "Surplus" means the excess of the net assets
90 of a business corporation over its stated capital.

91 (t) "Treasury shares" means shares of a business
92 corporation which have been issued and have been sub-
93 sequently acquired by and belong to such corporation,
94 and have not, either by reason of the acquisition or there-
95 after, been canceled or restored to the status of authorized
96 but unissued shares. Treasury shares shall be deemed
97 to be issued shares, but not outstanding shares.

§31-1-20. Quorum of shareholders or members.

1 In the case of a business corporation, unless otherwise

2 provided in the articles of incorporation, a majority of the
3 shares entitled to vote, represented in person or by proxy,
4 shall constitute a quorum at a meeting of shareholders,
5 but in no event shall a quorum consist of less than one
6 third of the shares entitled to vote at the meeting.

7 In the case of a nonprofit corporation, the bylaws may
8 provide the number or percentage of members entitled
9 to vote represented in person or by proxy, which shall
10 constitute a quorum at a meeting of members and in the
11 absence of any such provision, members holding one tenth
12 of the votes entitled to be cast on the matter to be voted
13 upon represented in person or by proxy shall constitute a
14 quorum. A majority of the votes entitled to be cast on a
15 matter to be voted upon by the members present or repre-
16 sented by proxy at a meeting at which a quorum is pres-
17 ent shall be necessary for the adoption thereof unless
18 a greater proportion is required by this article, the articles
19 of incorporation or the bylaws.

20 If a quorum is present, the affirmative vote of the
21 majority of the shares represented or members present at
22 the meeting and entitled to vote on the subject matter
23 shall be the act of the shareholders or members, unless
24 the vote of a greater number or voting by classes is
25 required by this article or the articles of incorporation or
26 bylaws. Any number less than a quorum present may
27 adjourn any stockholders or members meeting until a
28 quorum is present.

§31-1-23. Quorum of directors.

1 A majority of the number of directors fixed by or in
2 the manner provided in the bylaws, or in the absence of a
3 bylaw fixing or providing for the number of directors,
4 then of the number stated in the articles of incorporation,
5 shall constitute a quorum for the transaction of business
6 unless a greater number is required by the articles of
7 incorporation or the bylaws. The act of the majority of
8 the directors present at a meeting at which a quorum is
9 present shall be the act of the board of directors, unless
10 the act of a greater number is required by the articles of
11 incorporation or the bylaws. Any number less than a

- 12 quorum present may adjourn any directors meeting until
13 a quorum is present.

§31-1-25. Director conflicts of interest.

1 (a) No contract or other transaction between a corpora-
2 tion and one or more of its directors or any other corpora-
3 tion, firm, association or entity in which one or more of its
4 directors are directors or officers or are financially in-
5 terested, shall be either void or voidable because of such
6 relationship or interest or because such director or direc-
7 tors are present at the meeting of the board of directors
8 or a committee thereof which authorizes, approves or
9 ratifies such contract or transaction or because his or
10 their votes are counted for such purpose, if:

11 (1) The fact of such relationship or interest is disclosed
12 or known to the board of directors or committee which
13 authorizes, approves or ratifies the contract or transaction
14 by a vote or consent sufficient for the purpose without
15 counting the votes or consents of such interested directors;
16 or

17 (2) The fact of such relationship or interest is disclosed
18 or known to the shareholders entitled to vote and they
19 authorize, approve or ratify such contract or transaction
20 by vote or written consent; or

21 (3) The contract or transaction is fair and reasonable to
22 the corporation.

23 (b) Common or interested directors may be counted in
24 determining the presence of a quorum at a meeting of the
25 board of directors or a committee thereof which autho-
26 rizes, approves or ratifies such contract or transaction.

27 (c) On any question involving the authorization, ap-
28 proval or ratification of any such contract or transaction,
29 the names of those voting each way shall be entered on
30 the record of their proceedings.

**§31-1-27. Articles of incorporation; contents; matters not re-
quired to be set forth; inconsistencies with bylaws;
acknowledgment.**

- 1 (a) The articles of incorporation shall set forth:

2 (1) The name of the corporation.

3 (2) The period of duration, which may be perpetual.

4 (3) The purpose or purposes for which the corpora-
5 tion is organized, which may be stated to be, or to include,
6 the transaction of any or all lawful business for which
7 corporations may be incorporated under this article.

8 (4) The address of its principal office, and the name
9 and address of the person to whom shall be sent notice
10 or process served upon, or service of which is accepted
11 by, the secretary of state, if such person has been ap-
12 pointed by the corporation.

13 (5) The number of directors constituting the initial
14 board of directors and the names and addresses of the
15 persons who are to serve as such directors.

16 (6) The name and address of each incorporator.

17 (b) In the case of a business corporation, in addition
18 to those matters required to be set forth by the provisions
19 of subsection (a) of this section, the articles of incorpora-
20 tion shall set forth:

21 (1) The aggregate number of shares which the cor-
22 poration shall have authority to issue; if such shares are
23 to consist of one class only, the par value of each of such
24 shares, or a statement that all of such shares are without
25 par value; or, if such shares are to be divided into classes,
26 the number of shares of each class, and a statement of
27 the par value of the shares of each such class or that
28 such shares are to be without par value.

29 (2) If the shares are to be divided into classes, the
30 designation of each class and a statement of the prefer-
31 ences, limitations and relative rights in respect of the
32 shares of each class.

33 (3) If the corporation is to issue the shares of any
34 preferred or special class in series, the designation of
35 each series and a statement of the variations in the rela-
36 tive rights and preferences as between series insofar as
37 the same are to be fixed in the articles of incorporation,
38 and a statement of any authority to be vested in the board
39 of directors to establish series and fix and determine the

40 variations in the relative rights and preferences as be-
41 tween series.

42 (4) Any provision limiting or denying to shareholders
43 the preemptive right to acquire additional unissued or
44 treasury shares of the corporation.

45 (5) Any provision, not inconsistent with law, which
46 the incorporators elect to set forth in the articles of in-
47 corporation for the regulation of the internal affairs of
48 the corporation, including any provision restricting the
49 transfer of shares and any provision which under this
50 article is required or permitted to be set forth in the
51 bylaws.

52 (c) In the case of a nonprofit corporation, in addition
53 to those matters required to be set forth by the provisions
54 of subsection (a) of this section, the articles of incorpora-
55 tion shall set forth any provisions, not inconsistent with
56 law, which the incorporators elect to set forth in such
57 articles of incorporation for the regulation of the internal
58 affairs of the corporation, including any provisions for
59 distribution of assets on dissolution or final liquidation.

60 (d) It shall not be necessary to set forth in the articles
61 of incorporation any of the corporate powers enumerated
62 in this article.

63 (e) Whenever a provision of the articles of incorpora-
64 tion is inconsistent with a bylaw, the provision of the
65 articles of incorporation shall be controlling.

66 (f) The articles of incorporation shall contain a state-
67 ment of the name and address of the person who, or the
68 firm which, prepared such articles of incorporation.

69 (g) The articles of incorporation shall be acknowl-
70 edged by the incorporators before a notary public and
71 transmitted with the proper fees to, and shall be filed
72 with, the secretary of state.

§31-1-30. Organizational meeting; notice, waiver of notice.

1 After the issuance of the certificate of incorporation
2 an organizational meeting of the board of directors named
3 in the articles of incorporation shall be held, either within

4 or without this state, at the call of the incorporator or of a
5 majority of the incorporators, for the purpose of adopting
6 bylaws, electing officers and the transaction of such other
7 business as may come before the meeting. The in-
8 corporator or incorporators calling the meeting shall
9 give at least three days' notice thereof by mail to each
10 director so named, which notice shall state the time
11 and place of the meeting, unless such notice is waived in
12 accordance with the provisions of this article.

**§31-1-73. Action by shareholders, members or directors with-
out a meeting.**

1 (a) Whenever the vote of shareholders or members at
2 a meeting thereof is required or permitted to be taken in
3 connection with any corporate action, the meeting and
4 vote of such shareholders or members may be dispensed
5 with if all of the shareholders or members who would
6 have been entitled to vote upon the action, if such meeting
7 were held, shall agree in writing to such corporate action
8 being taken, and such agreement shall have like effect
9 and validity as though the action were duly taken by the
10 unanimous action of all shareholders or members entitled
11 to vote at a meeting of such shareholders or members
12 duly called and legally held.

13 (b) Unless otherwise provided in the articles of in-
14 corporation or the bylaws, whenever the vote of directors
15 at a meeting thereof is required or permitted to be taken
16 in connection with any corporate action, the meeting and
17 vote of such directors may be dispensed with if all the
18 directors shall agree in writing to such corporate action
19 being taken, and such agreement shall have like effect
20 and validity as though the action were duly taken by the
21 unanimous action of all directors at a meeting of such
22 directors duly called and legally held.

23 (c) In the event that the action which is agreed to, as
24 provided for in subsection (a) or (b) of this section, is
25 such as would have required the filing of any articles,
26 document or certificate with the secretary of state under
27 any provision of this article, if such action had been voted
28 upon by the shareholders or members or by the directors

29 at a meeting, the articles, document or certificate so filed
30 shall state that written agreement has been executed in
31 lieu of stating that the shareholders, members or directors
32 voted upon the corporate action in question and such
33 articles, document or certificate shall have the same force
34 and effect under all provisions of law as if the action had
35 been taken by the unanimous vote of all shareholders or
36 members entitled to vote, or of all the directors, at a
37 meeting duly called and legally held.

§31-1-109. Articles of amendment.

1 The articles of amendment shall be executed in dupli-
2 cate by the corporation by its president or a vice presi-
3 dent and by its secretary or an assistant secretary and
4 verified by one of the officers signing such articles, and
5 shall set forth:

6 (a) The name of the corporation.

7 (b) The amendment so adopted.

8 (c) The date of the adoption of the amendment by the
9 shareholders, or by the board of directors where no shares
10 have been issued.

11 (d) The number of shares outstanding, and the number
12 of shares entitled to vote thereon, and if the shares of any
13 class are entitled to vote thereon as a class, the designa-
14 tion and number of outstanding shares entitled to vote
15 thereon of each such class.

16 (e) The number of shares voted for and against such
17 amendment, respectively, and, if the shares of any class
18 are entitled to vote thereon as a class, the number of
19 shares of each such class voted for and against such
20 amendment, respectively, or if no shares have been issued,
21 a statement to that effect.

22 (f) If such amendment provides for an exchange, re-
23 classification or cancellation of issued shares, and if the
24 manner in which the same shall be effected is not set
25 forth in the amendment, then a statement of the manner
26 in which the same shall be effected.

27 (g) If such amendment effects a change in the amount
28 of stated capital, then a statement of the manner in
29 which the same is effected and a statement, expressed in
30 dollars, of the amount of stated capital as changed by
31 such amendment.

32 (h) The name and address of the person who, or the
33 firm which, prepared such amendment.

§31-1-140. Removal of directors.

1 A director may be removed from office pursuant to
2 any procedure therefor provided in the articles of incor-
3 poration or bylaws; or, if no procedure therefor is pro-
4 vided in the articles of incorporation or bylaws, directors
5 may be removed at a meeting of members called expressly
6 for that purpose in the manner provided in this section.
7 Any director or the entire board of directors may be re-
8 moved, with or without cause, by a vote of a majority of
9 the members then entitled to vote at an election of di-
10 rectors.

11 If less than the entire board is to be removed, no one
12 of the directors may be removed if the votes cast against
13 his removal would be sufficient to elect him.

14 Whenever the members of any class are entitled to elect
15 one or more directors by the provisions of the articles of
16 incorporation, the provisions of this section shall apply,
17 in respect to the removal of a director or directors so
18 elected, to the vote of the members of that class and not
19 to the vote of all the members entitled to vote.

⋮

CHAPTER 27

(S. B. 486—By Mr. Suman and Mr. McGraw)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article ten,
chapter three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to filling

vacancies in offices of county commissioner or clerk of the county commission.

Be it enacted by the Legislature of West Virginia:

That section seven, article ten, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

1 Any vacancy in the office of county commissioner or
2 clerk of county commission shall be filled by the
3 county commission of the county, unless the number
4 of vacancies in a county commission deprive that body
5 of a quorum, in which case the governor of the state
6 shall fill any vacancy in such county commission
7 necessary to create a quorum thereof, until the next
8 general election, at which election every such vacancy
9 shall be filled by election for the unexpired term:
10 *Provided*, That in the event a quorum of the county
11 commission cannot agree upon a person to fill a vacancy
12 in the office of county commissioner until the next general
13 election, it shall be the mandatory, nondiscretionary
14 duty of each such county commissioner, within sixty days
15 from the date such vacancy occurs, to submit in person
16 to the judge of the circuit court of such county, the name
17 of one person who is a member of the same political
18 party as was the person whose vacancy is being filled
19 and was such a member for at least one year next pre-
20 ceding the filling of such vacancy and who is legally
21 qualified and willing to fill such vacancy. The judge shall
22 thereupon, in the presence of the quorum of the county
23 commission, cause each name to be written on a separate
24 piece of paper, shall fold or roll up the pieces of paper
25 so as to resemble each other and so that the name
26 written thereon shall not be visible on the outside, and
27 shall deposit the pieces of paper in a box from which
28 one of the county commissioners, selected by lot under
29 the supervision of such judge, shall, in the presence
30 of each other and the judge, draw one of the names

31 and the person whose name is so drawn shall be the
 32 county commission's choice to fill such vacancy. The
 33 circuit court shall have jurisdiction to compel compliance
 34 with the provisions of this proviso.

35 Notice of such election as aforesaid shall be given by
 36 order of the county commission and published as pre-
 37 scribed in section six of this article. Nomination of can-
 38 didates to fill the office for an unexpired term in the
 39 office of county commission or clerk of the county com-
 40 mission shall be made in the manner prescribed for
 41 making nominations to fill a vacancy in the office of the
 42 clerk of the circuit court.

♦

CHAPTER 28

(H. B. 1103—By Mr. Scott)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to bonds of county officers.

Be it enacted by the Legislature of West Virginia:

That section ten, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. OFFICIAL AND OTHER BONDS.

§6-2-10. Bonds of county officers.

1 Every commissioner of a county commission and every
 2 clerk of a circuit court shall give bond with good security,
 3 to be approved by the circuit court, or the judge thereof in
 4 vacation; and every sheriff, surveyor of lands, clerk of a
 5 county commission, assessor, county superintendent of schools,
 6 notary public, justice of the peace and constable shall give bond
 7 with good security, to be approved, unless otherwise provided

8 by law, by the county commission of the county in which
9 such officer is to act. The penalty of the bond of each
10 commissioner of a county commission shall be not less than
11 twenty thousand dollars and not more than two hundred
12 thousand dollars, the amount to be fixed by the circuit court of
13 the county, or the judge thereof in vacation, by order entered
14 of record on the proper order books of both the county and
15 circuit courts; of the clerk of the circuit court, not less than
16 ten thousand nor more than fifty thousand dollars; of the
17 sheriff, not less than twenty-five thousand dollars nor more
18 than the aggregate amount of all state, county, district, school,
19 municipal and other moneys which will probably come into his
20 hands during any one year of his term of office; of the
21 surveyor of lands, not less than one thousand nor more than
22 three thousand dollars; of the clerk of the county commission,
23 not less than ten thousand nor more than fifty thousand dollars;
24 of the assessor, not less than two thousand nor more than five
25 thousand dollars; of the county superintendent of schools, not
26 less than ten thousand nor more than fifty thousand dollars; of
27 a notary public, not less than two hundred fifty nor more
28 than one thousand dollars. Any public body required to pay the
29 premiums on official bonds may provide a blanket bond policy
30 for two or more such official bonds: *Provided*, That the bond
31 herein required to be given by a notary public may be given
32 before the clerk of the county commission, in the vacation
33 of said commission, and approved by it at its next regular
34 session.

CHAPTER 29

(S. B. 27—By Mr. Steptoe)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing from six not to exceed eight percent per annum the

interest borne on assessments paid for permanent improvements to property made by county commissions and increasing from six not to exceed eight percent per annum the interest drawn on the coupon-bearing certificates payable for such assessments.

Be it enacted by the Legislature of West Virginia:

That section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers and improved streets.

1 In addition to all other powers and duties now con-
2 ferred by law upon county commissions, such commissions
3 are hereby authorized and empowered to install, con-
4 struct, repair, maintain and operate waterworks, water
5 mains, sewer lines and sewage disposal plants in connec-
6 tion therewith within their respective counties: *Provided,*
7 That the county commission of Webster County is autho-
8 rized to expend county funds in the opening of, and up-
9 keep of a sulphur well now situate on county property:
10 *Provided,* That such authority and power herein conferred
11 upon county commissions shall not extend into the terri-
12 tory within any municipal corporation: *Provided, however,*
13 That any county commission is hereby authorized to enter
14 into contracts or agreements with any municipality within
15 the county, or with a municipality in an adjoining county,
16 with reference to the exercise of the powers vested in
17 such commissions by this section.

18 In addition to the foregoing, the county commission
19 shall have the power to improve streets, sidewalks and
20 alleys and lay sewers as follows: Upon petition in writing
21 duly verified, of the persons, firms or corporations owning
22 not less than sixty percent of the frontage of the lots
23 abutting on both sides of any street or alley, between
24 any two cross-streets, or between a cross-street and an

25 alley in any unincorporated community, requesting the
26 county commission so to do according to plans and speci-
27 fications submitted with such petition and offering to
28 have their property so abutting assessed not only with
29 their portion of the cost of such improvement abutting
30 upon their respective properties, but also offering to have
31 their said properties proportionately assessed with the
32 total cost of paving, grading and curbing the intersections
33 of such streets and alleys, the county commission may
34 cause any such street or alley to be improved or paved
35 or repaved substantially with the materials and according
36 to such plans and specifications as hereinafter provided:
37 *Provided, however,* That the county commission is further
38 authorized, if the said county commission so determines
39 by a unanimous vote of its constituted membership, that
40 two or more intersecting streets, sidewalks, alleys and
41 sewers, should be improved as one project, in order to
42 satisfy peculiar problems resulting from access as well
43 as drainage problems, then, in that event, the said county
44 commission may order such improvements as one single
45 unit and project, upon petition in writing duly verified
46 of the persons, firms or corporations owning not less than
47 sixty percent of the frontage of the lots abutting on both
48 sides of all streets or alleys, or portions thereof included
49 by said county commission in said unit and project.

50 The total cost including labor and materials, engineer-
51 ing, and legal service of grading and paving, curbing,
52 improving any such street or alley (including the cost
53 of the intersections) and assessing the cost thereof shall
54 be borne by the owners of the land abutting upon such
55 street or alley when the work is completed and accepted
56 according to the following plan, that is to say, payment is
57 to be made by all landowners on either side of such street
58 or alley so paved or improved, in such proportion of the
59 total cost as the frontage in feet of each owner's land so
60 abutting bears to the total frontage of all the land so
61 abutting on such street or alley, so paved or improved as
62 aforesaid, which computation shall be made by the county
63 engineer or surveyor and certified by him to the clerk of
64 said commission.

65 Upon petition in writing duly verified, of the persons,
66 firms or corporations owning not less than sixty percent of
67 the frontage of the lots abutting on one side of any street
68 between any two cross-streets or between a cross-street
69 and an alley in any unincorporated community requesting
70 the county commission so to do according to plans and
71 specifications submitted with such petition and offering to
72 have their property so abutting assessed with the total
73 cost thereof, the county commission may cause any side-
74 walk to be improved, or paved, or repaved, substantially
75 with such materials according to such plans and speci-
76 fications and the total cost including labor and materials,
77 engineering and legal service of improving, grading, pav-
78 ing or repaving such sidewalk and assessing the cost
79 thereof shall, when the work is completed and accepted,
80 be assessed against the owners of the lots or fractional
81 part of lots abutting on such sidewalk, in such portion
82 of the total cost as the frontage in feet of each owner's
83 land so abutting bears to the total frontage of all lots so
84 abutting on such sidewalk so paved or improved, as afore-
85 said, which computation shall be made by the county
86 engineer or surveyor and certified by him to the clerk of
87 said commission.

88 Upon petition in writing duly verified, of the persons,
89 firms or corporations owning not less than sixty percent of
90 the frontage of the lots abutting on both sides of any
91 street or alley, in any unincorporated community request-
92 ing the county commission so to do according to plans and
93 specifications submitted with such petition and offering to
94 have their property so abutting assessed with the cost, as
95 hereinafter provided, the county commission may lay and
96 construct sanitary sewers in any street or alley with such
97 materials and substantially according to such plans and
98 specifications and when such sewer is completed and
99 accepted, the county engineer or surveyor shall report to
100 the county commission, in writing, the total cost of such
101 sewer and a description of the lots and lands, as to the
102 location, frontage, depth and ownership liable for such
103 sewer assessment, so far as the same may be ascertained,
104 together with the amount chargeable against each lot and
105 owner, calculated in the following manner: The total cost

106 of constructing and laying the sewer including labor,
107 materials, legal and engineering services shall be borne by
108 the owners of the land abutting upon the streets and alleys,
109 in which the sewer is laid according to the following plan:
110 Payment is to be made by each landowner on either side of
111 such portion of a street or alley in which such sewer is
112 laid, in such proportions as the frontage of his land upon
113 said street or alley bears to the total frontage of all lots
114 so abutting on such street or alley. In case of a corner
115 lot, frontage is to be measured along the longest dimen-
116 sions thereof abutting on such street or alley in which
117 such sewer is laid. Any lot having a depth of two hundred
118 feet or more, and fronting on two streets or alleys, one in
119 the front and one in the rear of said lot, shall be assessed
120 on both of said streets or alleys if a sewer is laid in both
121 such streets and alleys. Where a corner lot has been as-
122 sessed on the end it shall not be assessed on the side for
123 the same sewer and where it has been assessed on the side
124 it shall not be assessed on the end for the same sewer.

125 If the petitioners request the improvement of any such
126 street, alley or sidewalk in a manner which does not re-
127 quire the permanent paving or repaving thereof, the coun-
128 ty commission shall likewise have authority to improve
129 such street, alley or sidewalk, substantially as requested
130 in such petition, and the total cost thereof including labor,
131 materials, engineering and legal services shall be assessed
132 against the abutting owners in the proportion which the
133 frontage of their lots abutting upon such street, alley or
134 sidewalk bears to the total frontage of all lots abutting
135 upon such street, alley or sidewalk so improved.

136 Upon the filing of such petition and before work is
137 begun, or let to contract, the county commission shall
138 fix a time and place for hearing protests and shall re-
139 quire the petitioners to post notice of such hearing in at
140 least two conspicuous places on the street, alley or side-
141 walk affected, and to give notice thereof by publication
142 of such notice as a Class I legal advertisement in com-
143 pliance with the provisions of article three, chapter
144 fifty-nine of this code, and the publication area for such
145 publication shall be the county in which the improvement

146 is to be made. The hearing shall be held not less than
147 ten nor more than thirty days after the filing of such
148 petition.

149 At the time and place set for hearing protests the
150 county commission may examine witnesses and consider
151 other evidence to show that said petition was filed in good
152 faith; that the signatures thereto are genuine; and that the
153 proposed improvement, paving, repaving or sewerage will
154 result in special benefits to all owners of property abutting
155 on said street, alley or sidewalk in an amount at least
156 equal in value to the cost thereof. The commission shall
157 within ten days thereafter enter a formal order stating
158 its decision and if the petition be granted shall proceed
159 after due advertisement, reserving the right to reject any
160 or all bids, to let a contract for such work and materials
161 to the lowest responsible bidder.

162 Any owner of property abutting upon said street, alley
163 or sidewalk aggrieved by such order shall have the right to
164 review the same on the record made before the county
165 commission by filing within ten days after the entry of
166 such order, a petition with the clerk of the circuit court
167 assigning errors and giving bond in a penalty to be fixed
168 by the circuit court to pay any costs or expenses incurred
169 upon such appeal should the order of the county commis-
170 sion be affirmed. The circuit court shall proceed to review
171 the matter as in other cases of appeal from the county
172 commission.

173 All assessments made under this section shall be certi-
174 fied to the county clerk and recorded in a proper trust
175 deed book and indexed in the name of the owner of any lot
176 or fractional part of a lot so assessed. The assessment so
177 made shall be a lien on the property liable therefor, and
178 shall have priority over all other liens except those for
179 taxes, and may be enforced by a civil action in the name
180 of the contractor performing the work in the same manner
181 as provided for other liens for permanent improvements.
182 Such assessment shall be paid in not more than ten equal
183 annual installments, bearing interest at a rate not to ex-
184 ceed eight percent per annum as follows: The first install-
185 ment, together with interest on the whole assessment,

186 shall be paid not later than one year from the date of such
187 assessment, and a like installment with interest on the
188 whole amount remaining unpaid each year thereafter until
189 the principal and all interest shall have been paid in full.

190 The county commission may issue coupon-bearing certifi-
191 cates payable in not more than ten equal annual in-
192 stallments for the amount of such assessment and the
193 interest thereon, to be paid by the owner of any lot or
194 fractional part thereof, fronting on such street, alley or
195 sidewalk which has been improved, paved, or repaved
196 or in which a sewer has been laid, as aforesaid, and the
197 holder of said certificate shall have a lien having priority
198 over all other liens except those for taxes upon the lot or
199 part of lot fronting on such street, alley or sidewalk,
200 and such certificate shall likewise draw interest from
201 the date of assessment at a rate not to exceed eight percent
202 per annum, and payment thereof may be enforced in the
203 name of the holder of said certificate by proper civil action
204 in any court having jurisdiction to enforce such lien.

205 Certificates authorized under this section may be issued,
206 sold or negotiated to the contractor doing the work, or to
207 his assignee, or to any person, firm, or corporation:
208 *Provided*, That the county commission in issuing such
209 certificates shall not be held as a guarantor, or in any
210 way liable for the payment thereof. Certificates so
211 issued shall contain a provision to the effect that in the
212 event of default in the payment of any one or more of said
213 installments, when due, said default continuing for a
214 period of sixty days, all unpaid installments shall there-
215 upon become due and payable, and the owner of said
216 certificates may proceed to collect the unpaid balance
217 thereof in the manner hereinbefore provided.

218 In all cases where petitioners request paving or re-
219 paving, or the laying of sewers under the provisions of
220 this section, the county commission shall let the work of
221 grading, paving, curbing or sewerage to contract to the
222 lowest responsible bidder. In each such case the county
223 commission shall require a bond in the penalty of the
224 contract price guaranteeing the faithful performance of
225 the work and each such contract shall require the con-

226 tractor to repair any defects due to defective workman-
227 ship or materials discovered within one year after the
228 completion of the work.

229 Upon presentation to the clerk of the county commis-
230 sion of the certificates evidencing the lien, duly canceled
231 and marked paid by the holder thereof, or evidence
232 of payment of the assessment if no certificates have been
233 issued, said clerk shall execute and acknowledge a release
234 of the lien which release may be recorded, as other re-
235 leases in the office of the clerk of the county commission.

236 The owner of any lot or fractional part of a lot
237 abutting upon such street, alley or sidewalk so improved,
238 paved, repaved or sewerred shall have the right to antici-
239 pate the payment of any such assessment or certificate by
240 paying the principal amount due, with interest accrued
241 thereon to date of payment, and also to pay the entire
242 amount, without interest at any time, within thirty days
243 following the date of the assessment.

244 Nothing in this section contained shall be construed to
245 authorize the county commissions of the various counties
246 to acquire any road construction, ditching or paving
247 equipment. The county commissions are hereby autho-
248 rized to rent from the state road commissioner or any other
249 person, firm or corporation such equipment as may be
250 necessary from time to time, to improve any street or
251 sidewalk which petitioners do not desire to have paved
252 in a permanent manner, and for such purpose to employ
253 such labor as may be necessary but no expense connected
254 therewith shall be charged to any county funds.

255 No county commission shall be under any duty after
256 the paving, repaving or improvement of any street, alley
257 or sidewalk or the laying of any sanitary sewer under the
258 provisions of this section, to maintain or repair the same,
259 but any such commission shall have authority upon peti-
260 tion duly verified, signed by at least sixty percent of the
261 owners of property abutting upon any improvement made
262 under this section, to maintain or repair such improvement
263 or sewer and to assess the cost thereof against the owners
264 of such abutting property in the same manner as the cost
265 of the original improvement.

CHAPTER 30

(H. B. 1167—By Mr. Goodwin)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowances for certain expenses incurred by sheriffs and increasing the allowance for keeping and feeding prisoners in certain counties.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-13. Allowance for expenses of sheriff.

1 The county commission of every county having a population
2 of thirty thousand or less as determined by the latest official
3 census available which, as provided in section two-a, article
4 eight of this chapter, has directed the sheriff as jailer to feed
5 prisoners shall, in addition to his compensation, allow to the
6 sheriff for keeping and feeding each prisoner, other than
7 federal prisoners or prisoners held under civil process as pro-
8 vided by law, three dollars per day for each prisoner.

9 The limitation per day shall not include cost of personal
10 service, bed or bedding, soaps, and disinfectants and items
11 of like kind, the cost of all of which shall be paid out of the
12 allowance fixed by the county commission under the provisions
13 of present law.

14 All supplies of whatever kind for keeping and feeding pris-
15 oners shall be purchased upon the requisition of the sheriff
16 under rules and regulations prescribed by the county com-
17 mission. At the end of each month the sheriff shall file with

18 the county commission a detailed statement showing the name
19 of each prisoner, date of commitment and date of discharge,
20 the number of days in jail, and shall also file an itemized
21 statement showing each purchase and the cost thereof for
22 keeping and feeding prisoners.

23 The county commission of every county shall allow the ac-
24 tual and necessary expenses incurred or expended by the
25 sheriff in the discharge of his duties, including, but not limited
26 to those incurred in arresting, pursuing or transporting per-
27 sons accused or convicted of crimes and offenses; in the cost
28 of law-enforcement and safety equipment; in conveying or
29 transporting a prisoner from and to jail to participate in court
30 proceedings, and in conveying or transferring any person to or
31 from any state institution where he may be committed from
32 his county, where by law the sheriff is authorized to convey
33 or transfer the person. The county commission shall allow the
34 actual and necessary expenses incurred or expended in serving
35 summonses, notices or other official papers in connection with
36 the sheriff's office.

37 Every sheriff shall file monthly, under oath, a full and ac-
38 curate account of all the actual and necessary expenses in-
39 curred by him, his deputies, assistants and employees in the
40 performance and discharge of their official duties supported
41 by verified accounts before reimbursement thereof shall be
42 allowed by the county commission. Reimbursement, properly
43 allowed, shall be made from the general county fund.

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CHAPTER 31

(H. B. 847—By Mr. Dinsmore and Mrs. Given)

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[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-a, relating to vacation time for deputy sheriffs under civil service.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen-a, to read as follows:

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17a. Vacations for deputy sheriffs.

1 The county commission of each county shall allow the
2 sheriff's deputies in its employ, vacation time accrued in the
3 following manner: For deputies with less than five years of
4 service, vacation time shall be accrued at the rate of one and
5 one-quarter days for each calendar month of service;
6 for deputies with five to ten years of service, vacation time
7 shall be accrued at the rate of one and one-half days for
8 each calendar month of service; for deputies with ten to fif-
9 teen years of service, vacation time shall be accrued at the
10 rate of one and three-quarter days for each calendar
11 month of service; for deputies with fifteen or more years of
12 service, vacation time shall be accrued at the rate of two days
13 for each calendar month of service.

14 Each deputy sheriff shall only receive vacation time for each
15 month in which he shall have worked one hour more than one
16 half the normal working hours in a given month as prescribed
17 by the sheriff.

18 No more than thirty days of accrued vacation time may be
19 carried forward from one calendar year to the next.

CHAPTER 32

(Com. Sub. for H. B. 1358—By Mrs. Given)

[Passed March 13, 1976; in effect January 1, 1977. Approved by the Governor.]

AN ACT to repeal sections five-a-(two) through five-a-(fifty-five), article two, chapter eleven, of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend

and reenact sections five-a and five-a-(one) of said article, all relating to additional compensation for assessors according to county classification; additional duties.

Be it enacted by the Legislature of West Virginia:

That sections five-a-(two) through five-a-(fifty-five), article two, chapter eleven, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections five-a and five-a-(one) of said article be amended and reenacted, all to read as follows:

ARTICLE 2. ASSESSORS.

§11-2-5a. Additional compensation; additional duties.

§11-2-5a(1). Additional compensation of assessors according to county classification.

§11-2-5a. Additional compensation; additional duties.

1 In addition to the salary or compensation provided else-
2 where in this code, the county commission of each county shall
3 pay to the assessor, on an annual basis, on and after July one,
4 one thousand nine hundred seventy-seven, additional com-
5 pensation in accordance with the provisions of this section
6 and section five-a-(one) of this article for such additional
7 duties required of him by this section.

8 To receive such additional compensation, the following duties
9 are hereby imposed upon every assessor of this state:

10 1. He shall annually complete a sales ratio analysis in a
11 manner prescribed by the state tax commissioner.

12 2. He shall present to the tax commissioner a list of real
13 property transfers of the prior assessment year by December
14 first annually.

15 3. He shall on or before December first of each year
16 supply a list of new construction and improvements exceed-
17 ing one thousand dollars of the previous assessment year
18 on forms prescribed by the state tax commissioner.

19 4. He shall on or before December first of each year
20 supply a list of new businesses added to the assessment
21 rolls and businesses that have discontinued operations in
22 the previous assessment year and been removed from the
23 assessment rolls.

24 5. He shall provide assistance to the tax commissioner
25 to disseminate information with respect to the taxation, classi-
26 fication and valuation of nonutility and public utility property
27 to the end that all property shall be more equally and uni-
28 formly assessed throughout the state.

29 6. He shall annually assist the tax commissioner in de-
30 termining the current use of such real property in his
31 county as the tax commissioner may require to accomplish a
32 uniform appraisal and assessment of real property.

33 The duties hereinbefore listed must be substantially com-
34 pleted by the assessor no later than the first day of November
35 of each year, and each assessor shall certify to the tax com-
36 missioner that he has substantially completed such duties in
37 accordance with requirements of the tax commissioner. If
38 at this time there has been substantial completion of the
39 above duties to the satisfaction of the tax commissioner,
40 the tax commissioner shall, but no later than the fifteenth
41 day of November of each year, certify to the county commission
42 that the assessor has substantially performed these duties
43 and is entitled to the remuneration provided for in section
44 five-a-(one) of this article.

**§11-2-5a(1). Additional compensation of assessors according to
county classification.**

1 For the purpose of determining the additional compensation
2 to be paid to the county assessor of each county for the
3 additional duties provided by section five-a of this article,
4 the following compensations for each county assessor by class,
5 as provided in section three, article seven, chapter seven, are
6 hereby established and shall be used by each county commission
7 in determining the compensation of each county assessor:

8	Class I	\$12,000
9	Class II	\$ 6,000
10	Class III	\$ 5,000
11	Class IV	\$ 2,500
12	Class V	\$ 1,500
13	Class VI	\$ 1,000

14 Notwithstanding this section or any other section of the code
15 to the contrary, in no event shall the additional compensation
16 paid to the county assessors for performance of additional
17 duties as provided in section five-a of this article be less than
18 the additional compensation such county assessors received
19 January one, one thousand nine hundred seventy-six.

CHAPTER 33

(H. B. 1067—By Mr. Sommerville)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirty-nine, article one, chapter three; section two-b, article one, chapter five-a; section one, article ten, chapter eight; section two, article ten, chapter eight; section eight, article nine, chapter sixteen; section thirteen-h, article two, chapter eighteen; section eight-a, article twenty-six, chapter eighteen; section fourteen, article one, chapter fifty-nine; section twenty-eight, article one, chapter fifty-nine; and section forty-one, article three, chapter sixty-one, all of said code, all relating to implementing the judicial reform amendment; creating a magistrates court system within the state; abolition of the offices of justice of the peace and constable; designating officer to arrest person accused of illegal voting and delivering affidavits of illegal voting to a magistrate; clarifying the manner of qualifying of security officers and their responsibilities; designating the judicial powers and duties of mayors; jurisdiction of municipal courts; removal of certain jurisdictions from municipal judges; election of magistrates; order of listing magistrate candidates on ballot; extension of filing deadline for candidates for magistrate; number of magistrates; salary of magistrates; qualification of magistrates; educational courses; exemptions for certain persons previously serving as justice of the peace from qualifications; magistrate's oath of office; removal and disciplinary procedures; filling of vacancies in office of magistrate; position of chief magistrate; qualifications, duties and salary of

magistrate court clerks; appointment of magistrate assistants; requiring bond; location of magistrate court offices by determination of circuit judge; payment of expenses of magistrate courts; prohibited conduct by a magistrate and providing a criminal penalty therefor; requiring magistrates to serve temporarily at other locations within and outside of the county; duty of sheriff to serve process and act as bailiff of magistrates court; maintaining provisions of law relating to justices of the peace in effect until the first day of January, one thousand nine hundred seventy-seven; providing for transition of judicial business to magistrates court; maintaining validity of acts and decisions of justices of the peace; authorizing supervisory rules; setting civil jurisdiction at one thousand five hundred dollars; civil jurisdiction generally; venue; giving magistrates criminal jurisdiction over all misdemeanors; establishing court costs in civil and criminal cases; providing procedures for disposition of costs between county and state; creation of a special county fund; disposition of certain justice of the peace fees and costs; disposition of fees, fines and forfeitures; posting security for costs by nonresident plaintiff; requiring sheriff to collect unpaid costs and fines; requiring the keeping of certain records; requiring financial audit by the chief inspector of public offices; providing procedure for institution of civil actions and criminal proceedings; requiring appointment of counsel for indigent defendants in criminal proceedings; providing that service of civil process shall be accomplished in the same manner as process from circuit courts; providing procedure whereby parties notify magistrate of desire for trial or confession of judgment; allowing removal to another magistrate by filing an affidavit of prejudice; removal to circuit court; allowing counterclaims; requiring sworn evidence for default judgment; requiring dismissal without prejudice of actions not within jurisdiction of magistrate; providing for dismissal of actions under certain circumstances; applying rules of evidence to magistrates court; mandatory and discretionary continuances; requiring the appointment of guardian ad litem in certain instances; providing for the issuance of subpoenas and subpoenas duces tecum; preserving certain communications privileged and prohibiting incompetent testimony; allowing evidentiary depositions; requiring magistrate to hold trials in misdemeanors rather than preliminary hearings when requested by

defendant; providing for jury trials and jury selection; requiring timely entry of judgment; allowing magistrate to set aside judgment in certain instances; contempt powers of magistrate and providing fine and imprisonment; providing procedure for automatic appeal to circuit court; providing for appeal bond; providing for enforcement of civil judgments; providing for filing of judgment in offices of circuit clerk and county clerk; increasing service of process fees to be charged by sheriff and requiring fees thereby collected from magistrates court to be dedicated to sheriff's budget; relating to jurisdiction of justices of the peace and magistrates with respect to parking violations on college campuses; relating to responsibilities and duties of security officers employed by the board of regents; relating to responsibilities and duties of special railroad policemen; and providing certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty-nine, article one, chapter three; section two-b, article one, chapter five-a; section one, article ten, chapter eight; section two, article ten, chapter eight; section eight, article nine, chapter sixteen; section thirteen-h, article two, chapter eighteen; section eight-a, article twenty-six, chapter eighteen; section fourteen, article one, chapter fifty-nine; section twenty-eight, article one, chapter fifty-nine; and section forty-one, article three, chapter sixty-one, all of said code be amended and reenacted, all to read as follows:

Chapter

3. Elections.

5A. Department of Finance and Administration.

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

16. Public Health.

18. Education.

50. Magistrate Courts.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

61. Crimes and Their Punishment.

CHAPTER 50. MAGISTRATE COURTS.**Article**

1. Courts and Officers.
2. Jurisdiction and Authority.
3. Costs, Fines and Records.
4. Procedure before Trial.
5. Trials, Hearings and Appeals.
6. Enforcement of Civil Judgments.

ARTICLE 1. COURTS AND OFFICERS.

- §50-1-1. Magistrate court created.
- §50-1-2. Number of magistrates.
- §50-1-3. Salary of magistrates.
- §50-1-4. Qualifications of magistrates; training; oath; continuing education; time devoted to public duties.
- §50-1-5. Removal from office; disciplinary procedures.
- §50-1-6. Vacancy in office of magistrate.
- §50-1-7. Chief magistrates; administrative responsibility.
- §50-1-8. Magistrate court clerks; duties; duties of circuit clerk.
- §50-1-9. Magistrate assistants; salary; duties; appointment of additional assistants.
- §50-1-10. Clerks and assistants to take oath and post bond.
- §50-1-11. Offices for magistrates; location; expenses; copy of state code.
- §50-1-12. Conduct of office; penalty.
- §50-1-13. Temporary service within or outside of county.
- §50-1-14. Duties of sheriff; service of process; bailiff.
- §50-1-15. Transitional provisions.
- §50-1-16. Supervisory rules.
- §50-1-17. Reference to justice of the peace; abolition of the office of constable.

§50-1-1. Magistrate court created.

1 There is hereby created in each county of this state a
2 magistrate court with such numbers of magistrates for each
3 court as are hereafter provided. There shall be elected by the
4 voters of each county, at the general election to be held in
5 the year one thousand nine hundred seventy-six, and in every
6 fourth year thereafter, such number of magistrates as is
7 provided in section two of this article. The filing fee for the
8 office of magistrate shall be one percent of the annual
9 salary. The term of magistrates shall be for four years and shall
10 begin on the first day of January of the year following the year
11 of election.

12 In counties where voting machines or electronic voting sys-
13 tems are used, the procedures of section eleven, article four,
14 chapter three and section twelve, article four-a of said chapter

15 three of this code shall apply respectively to the election of
16 magistrates in the same manner as they apply to the election of
17 members of the House of Delegates.

18 Notwithstanding the provisions of section seven, article
19 five, chapter three of this code, for purposes of the primary
20 election to be held in the year one thousand nine hundred
21 seventy-six, the last day for filing certificates of candidacy
22 for the office of magistrate shall be extended to the twenty-
23 seventh day of February of that year.

§50-1-2. Number of magistrates.

1 In each county which has less than thirty thousand in
2 population there shall be elected two magistrates. In each
3 county which has thirty thousand or more in population but
4 less than sixty thousand in population there shall be elected
5 three magistrates; except that in the county of McDowell there
6 shall be elected four magistrates. In each county which has six-
7 ty thousand or more in population but less than one hundred
8 thousand in population there shall be elected four magistrates.
9 In each county which has one hundred thousand or more in
10 population but less than two hundred thousand in population
11 there shall be elected seven magistrates. In each county which
12 has two hundred thousand or more in population there shall
13 be elected ten magistrates. For the purpose of this article,
14 the population of each county shall be considered to be the
15 population as determined by the last preceding census taken
16 under the authority of the United States government. No
17 change in the number of magistrates caused by the publication
18 of more recent such census figures shall be effective until
19 the next regular election for such office occurring after the
20 year of such publication.

§50-1-3. Salary of magistrates.

1 The salary of each magistrate shall be paid by the state.
2 Magistrates who serve five thousand or less in population
3 shall be paid annual salaries of seven thousand dollars.
4 Magistrates who serve more than five thousand in population
5 but less than ten thousand in population shall be paid annual
6 salaries of ten thousand dollars. Magistrates who serve ten

7 thousand or more in population but less than fifteen thou-
8 sand in population shall be paid annual salaries of fourteen
9 thousand dollars. Magistrates who serve fifteen thousand or
10 more in population shall be paid annual salaries of eighteen
11 thousand dollars. For the purpose of determining the popu-
12 lation served by each magistrate, the number of magistrates
13 authorized for each county shall be divided into the popula-
14 tion of each county. Magistrates shall be paid once a month.

§50-1-4. Qualifications of magistrates; training; oath; continuing education; time devoted to public duties.

1 Each magistrate shall be at least twenty-one years of age,
2 shall have a high school education or its equivalent, shall
3 not have been convicted of any felony or any misdemeanor in-
4 volving moral turpitude and shall reside in the county of his
5 election. No magistrate shall be a member of the immediate
6 family of any other magistrate in the county. In the event more
7 than one member of an immediate family shall be elected in a
8 county, only the member receiving the highest number of votes
9 shall be eligible to serve. For purposes of this section, imme-
10 diate family means the relationship of mother, father, sister,
11 brother, child or spouse. Notwithstanding the foregoing provi-
12 sions of this section, each person who held the office of justice
13 of the peace on the fifth day of November, one thousand nine
14 hundred seventy-four, and who served in or performed the
15 functions of such office for at least one year immediately prior
16 thereto shall be deemed qualified to run for the office of mag-
17 istrate in the county of his residence.

18 No person shall assume the duties of magistrate unless he
19 shall have first attended and completed a course of instruction
20 in rudimentary principles of law and procedure which shall be
21 given between the date of election and the beginning of the
22 magistrate's term in accordance with the supervisory rules of
23 the supreme court of appeals.

24 All magistrates shall be required to attend such other
25 courses of continuing educational instruction as may be
26 required by supervisory rule of the supreme court of appeals.
27 Failure to attend such courses of continuing educational in-
28 struction without good cause shall constitute neglect of duty.

29 Such courses shall be provided at least once every other year.
30 Persons attending such courses outside of the county of their
31 residence shall be reimbursed by the state for expenses actually
32 incurred not to exceed thirty-five dollars per day and for
33 travel expenses at the rate of fifteen cents per mile for one
34 round trip.

35 Each magistrate shall, before assuming the duties of office,
36 take an oath of office to be administered by the circuit judge
37 of the county, or the chief judge thereof if there is more than
38 one judge of the circuit court. Each magistrate shall maintain
39 the qualifications for office at all times.

40 Each magistrate who serves five thousand or less in popu-
41 lation shall devote such time to his public duties as shall be
42 required by rule or regulation of the judge of the circuit court,
43 or the chief judge thereof if there is more than one judge of the
44 circuit court. Each magistrate who serves more than five thou-
45 sand in population shall devote full time to his public duties.
46 As nearly as practicable the work load and the total number of
47 hours required shall be divided evenly among the magistrates
48 in a county by such judge.

§50-1-5. Removal from office; disciplinary procedures.

1 A magistrate may be removed from office in the manner
2 provided in section seven, article six, chapter six of this code.
3 In addition to the grounds for removal enumerated in section
4 three, article six, chapter six of this code, a magistrate may be
5 removed from office for conviction of a felony, for conviction
6 of a misdemeanor involving moral turpitude or a duty of the
7 office, or for willful violation of this chapter or any rule, regu-
8 lation or order provided for in this chapter. In addition to
9 other methods provided by law, removal proceedings may be
10 initiated upon the motion of a judge of the circuit court of the
11 county.

12 A magistrate may be censured or temporarily suspended in
13 accordance with the rules of the supreme court of appeals.

§50-1-6. Vacancy in office of magistrate.

1 When a vacancy occurs in the office of magistrate the judge
2 of the circuit court, or the chief judge thereof if there is more

3 than one judge of the circuit court, shall fill the same by ap-
4 pointment until the next general election and the person so
5 appointed shall hold office until his successor is elected and
6 qualified.

7 At such general election a magistrate shall be elected for
8 the unexpired term. Such circuit judge shall cause a notice
9 of such election to be published prior to such election as a
10 Class II-0 legal advertisement in compliance with the provi-
11 sions of article three, chapter fifty-nine of this code, and the
12 publication area for such publication shall be the county in-
13 volved. If the vacancy occurs before the primary election held
14 to nominate candidates to be voted for at the general election,
15 at which any such vacancy is to be filled, candidates to fill
16 such vacancy shall be nominated at such primary election in
17 accordance with the time requirements and the provisions
18 and procedures prescribed in article five, chapter three of this
19 code. Otherwise, they shall be nominated by the county
20 executive committee in the manner provided in section nine-
21 teen, article five, chapter three of this code, as in the case of
22 filling vacancies in nominations, and the names of the per-
23 sons so nominated and certified to the clerk of the circuit court
24 of such county shall be placed upon the ballot to be voted
25 at such next general election.

§50-1-7. Chief magistrates; administrative responsibility.

1 The judge of the circuit court, or the chief judge thereof if
2 there is more than one judge of the circuit court, may appoint
3 one of the magistrates, to serve at the will and pleasure of such
4 circuit court judge, as the chief magistrate of the county. The
5 chief magistrate, if there is one, shall be responsible for all of
6 the administrative functions required of the magistrate court
7 in each county by this code and as required by rules and regu-
8 lations of the supreme court of appeals. These functions shall
9 include, but not be limited to, supervising the circuit clerk or
10 magistrate court clerk in the establishment and maintenance
11 of a centralized docketing system, submitting all reports re-
12 quired by law and promptly notifying such circuit court judge
13 that additional magistrates are required to handle the cases
14 then pending in the magistrate court of said county.

§50-1-8. Magistrate court clerks; duties; duties of circuit clerk.

1 In each county having three or more magistrates the judge of
2 the circuit court, or the chief judge thereof if there is more
3 than one judge of the circuit court, shall appoint a magistrate
4 court clerk. In all other counties such judge may appoint a
5 magistrate court clerk or may by rule require the duties of the
6 magistrate court clerk to be performed by the clerk of the
7 circuit court. In any county a magistrate court clerk may be
8 appointed prior to the first day of January, one thousand nine
9 hundred seventy-seven. The magistrate court clerk shall serve
10 at the will and pleasure of such circuit judge.

11 Magistrate court clerks shall be paid a monthly salary by the
12 state. Magistrate court clerks serving magistrates who serve
13 five thousand or less in population shall be paid up to two hun-
14 dred fifty dollars per month. Magistrate court clerks serving
15 magistrates who serve more than five thousand in population
16 but less than ten thousand in population shall be paid up to
17 four hundred fifty dollars per month. Magistrate court clerks
18 serving magistrates who serve more than ten thousand in popu-
19 lation but less than fifteen thousand in population shall be
20 paid up to five hundred fifty dollars per month. Magistrate
21 court clerks serving magistrates who serve fifteen thousand or
22 more in population shall be paid up to six hundred fifty dol-
23 lars per month. For the purpose of determining the population
24 served by each magistrate, the number of magistrates autho-
25 rized for each county shall be divided into the population of
26 each county. The salary of the magistrate court clerk shall be
27 established by the judge of the circuit court, or the chief judge
28 thereof if there is more than one judge of the circuit court,
29 within the limits set forth in this section.

30 In addition to such other duties as may be imposed by the
31 provisions of this chapter or by the rules of the supreme court
32 of appeals or the judge of the circuit court, or the chief judge
33 thereof if there is more than one judge of the circuit court, it
34 shall be the duty of the magistrate court clerk to establish and
35 maintain appropriate dockets and records in a centralized
36 system for magistrate court, to assist in the preparation of such
37 reports as may be required of the court and to carry out on

38 behalf of the magistrates, or chief magistrate, if a chief mag-
39 istrate is appointed, the administrative duties of the court.

40 Magistrate court clerk or, if there is no magistrate court
41 clerk in the county, the clerk of the circuit court shall have the
42 authority to issue all manner of civil process in magistrate
43 court.

§50-1-9. Magistrate assistants; salary; duties; appointment of additional assistants.

1 In each county there shall be one magistrate assistant for
2 each magistrate serving magistrate court. Each magistrate
3 assistant shall be appointed by the magistrate under whose
4 authority and supervision and at whose will and pleasure he
5 shall serve. Such assistant shall not be a member of the im-
6 mediate family of any magistrate, shall not have been convicted
7 of a felony or any misdemeanor involving moral turpitude and
8 shall reside in the county where appointed. For the purpose of
9 this section, immediate family shall mean the relationships of
10 mother, father, sister, brother, child or spouse.

11 A magistrate assistant shall have such duties, clerical or
12 otherwise, as may be assigned by the magistrate and as may be
13 prescribed by the rules of the supreme court of appeals or the
14 judge of the circuit court, or the chief judge thereof if there
15 is more than one judge of the circuit court. In addition to
16 such duties, magistrate assistants shall have the duty to prepare
17 the summons in civil actions, to collect all costs, fees, fines,
18 forfeitures and penalties which may be payable to the court, to
19 submit such moneys, along with an accounting thereof, to
20 appropriate authorities as provided by law, and to submit such
21 reports as by law may be required.

22 Magistrate assistants shall be paid a monthly salary by
23 the state. Magistrate assistants serving magistrates who serve
24 five thousand or less in population shall be paid up to two
25 hundred fifty dollars per month. Magistrate assistants serving
26 magistrates who serve more than five thousand in population
27 but less than ten thousand in population shall be paid up to
28 four hundred fifty dollars per month. Magistrate assistants
29 serving magistrates who serve more than ten thousand in
30 population but less than fifteen thousand in population shall be

31 paid up to five hundred fifty dollars per month. Magistrate
32 assistants serving magistrates who serve fifteen thousand or
33 more in population shall be paid up to six hundred fifty dol-
34 lars per month. For the purpose of determining the population
35 served by each magistrate, the number of magistrates authorized
36 for each county shall be divided into the population of each
37 county. The salary of the magistrate assistant shall be
38 established by the magistrate within the limits set forth in
39 this section. The salary of an additional magistrate assistant
40 appointed pursuant to the provisions of this section shall be
41 established by the person making the appointment of such
42 additional magistrate assistant within such limits.

43 If required by work load and upon the recommendation of
44 the judge of the circuit court, or the chief judge thereof if there
45 is more than one judge of the circuit court, the supreme court
46 of appeals may by rule provide for additional magistrate
47 assistants. When an additional magistrate assistant is
48 authorized, such rule shall allow the appointment to be made
49 by the magistrate when such magistrate assistant shall be
50 working exclusively under the supervision of one magistrate
51 but otherwise shall allow the appointment to be made by
52 such judge.

§50-1-10. Clerks and assistants to take oath and post bond.

1 Each magistrate court clerk and magistrate assistant shall
2 take an oath of office and shall post a bond in the penalty of
3 twenty-five thousand dollars with sufficient surety approved by
4 the administrative director of the supreme court of appeals or
5 the judge of the circuit court, or the chief judge thereof if
6 there is more than one judge of the circuit court, which bond
7 shall be conditioned upon the faithful performance of the
8 duties of the office. The state shall pay the cost of such bond
9 and the administrative director of the supreme court of ap-
10 peals may obtain, in lieu of individual bonds, a bond including
11 more than one magistrate court clerk or magistrate assistant.

§50-1-11. Offices for magistrates; location; expenses; copy of state code.

1 Subject to the rules of the supreme court of appeals, the
2 location of offices for magistrates shall be determined by order

3 of the judge of the circuit court, or the chief judge thereof if
4 there is more than one judge of the circuit court. When re-
5 quired by geography or population dispersion and in order to
6 make such offices accessible to the public, such order may re-
7 quire more than one location for each magistrate. As near as
8 practicable within a county, all office accommodations shall
9 be comparable. All expenses of acquiring or renting such of-
10 fices and utility and telephone expenses thereof shall be paid
11 by the county. All other expenses, including but not limited to
12 expenses for furniture, equipment and supplies, shall be paid
13 by the state. The administrative director of the supreme court
14 of appeals shall supply each magistrate with a current copy of
15 the West Virginia code which shall remain the property of the
16 state.

§50-1-12. Conduct of office; penalty.

1 Magistrates shall be subject to and shall abide by the code
2 of judicial ethics as adopted and amended by the supreme
3 court of appeals. In addition to such conduct as may be regu-
4 lated by the rules of the supreme court of appeals, no magis-
5 trate, magistrate court clerk or magistrate assistant shall

6 (a) Acquire or hold any interest in any matter which is be-
7 fore the magistrate court;

8 (b) Purchase, either directly or indirectly, any property be-
9 ing sold upon execution issued by the magistrate court;

10 (c) Act as agent or attorney for any party in any proceeding
11 in any magistrate court in the state; or

12 (d) Engage in, or assist in, any remunerative endeavor, ex-
13 cept the duties of his office, while on the premises of the mag-
14 istrate court office.

15 Any person who violates the provisions of this section shall
16 be guilty of official misconduct and shall be guilty of a mis-
17 demeanor, and, upon conviction thereof, shall be fined not
18 more than five hundred dollars. Any judgment rendered in-
19 volving conduct in violation of this section shall be void.

§50-1-13. Temporary service within or outside of county.

1 The chief justice of the supreme court of appeals or judge of

2 the circuit court of the county in which a magistrate is elected,
3 or the chief judge thereof if there is more than one judge of the
4 circuit court, may order a magistrate to serve temporarily at
5 locations within the county other than at the regular office or
6 offices of such magistrate.

7 The chief justice of the supreme court of appeals or judge
8 of the circuit court of the county in which a magistrate is
9 elected, or the chief judge thereof if there is more than one
10 judge of the circuit court, may by order direct a magistrate to
11 serve temporarily in any other county within the judicial cir-
12 cuit for such purposes as the judge may direct. Such magis-
13 trate's authority, to the extent ordered by such judge, shall be
14 equal to the jurisdiction and authority of a magistrate elected
15 in the county to which such magistrate is ordered to serve.
16 Such temporary assignment may not exceed sixty days in length
17 in any given calendar year, except with the consent of the
18 transferred magistrate. Magistrates shall be reimbursed for
19 such reasonable expenses incurred in service outside of the
20 county as provided for by rule of the supreme court of appeals.

§50-1-14. Duties of sheriff; service of process; bailiff.

1 It shall be the duty of each sheriff to execute all civil and
2 criminal process from any magistrate court which may be di-
3 rected to such sheriff. Process shall be served in the same
4 manner as provided by law for process from circuit courts.

5 Notwithstanding any provision contained therein to the con-
6 trary, the provisions of section thirty-one, article three, chapter
7 fifty-six of this code relating to service of process on nonresi-
8 dent operators of motor vehicles shall apply to actions in mag-
9 istrate courts.

10 Subject to the supervision of the chief justice of the supreme
11 court of appeals or of the judge of the circuit court, or the
12 chief judge thereof if there is more than one judge of the cir-
13 cuit court, it shall be the duty of the sheriff, or his designated
14 deputy, to serve as bailiff of a magistrate court upon the re-
15 quest of the magistrate. Such service shall also be subject to
16 such administrative rules as may be promulgated by the su-
17 preme court of appeals. The writ of mandamus shall lie on
18 behalf of a magistrate to enforce the provisions of this section.

§50-1-15. Transitional provisions.

1 Except as the same may be otherwise amended by act of
2 the Legislature, and except for the provisions of article
3 twenty of this chapter, all of the provisions of chapter fifty
4 of this code existing immediately prior to the effective date
5 of this chapter shall remain in full force and effect until the
6 first day of January, one thousand nine hundred seventy-
7 seven.

8 Immediately after the expiration of his term of office and
9 in no event later than thirty days thereafter each justice of
10 the peace shall pay over to appropriate authorities or persons
11 such moneys as may be held by him and submit such reports to
12 such authorities or persons as are required by law.

13 Every justice of the peace, upon the expiration of his term
14 of office, shall forthwith deliver his official docket, together
15 with such dockets of his predecessors as he may have, to the
16 magistrate court clerk or, if there is no magistrate court clerk,
17 to the clerk of the circuit court, who shall maintain such
18 dockets as directed by the supreme court of appeals
19 or by the judge of the circuit court, or the chief
20 judge thereof if there is more than one judge of the circuit
21 court.

22 No act done by a justice of the peace prior to the first day
23 of January, one thousand nine hundred seventy-seven, shall be
24 affected by virtue of the abolition of the office of justice of
25 the peace. Matters pending before a justice of the peace
26 prior to such date or which might otherwise require further
27 action by a justice of the peace shall be handled by the
28 magistrate to whom such matter is assigned or in such other
29 manner as may be ordered by the judge of the circuit court,
30 or the chief judge thereof if there is more than one judge of
31 the circuit court.

§50-1-16. Supervisory rules.

1 The supreme court of appeals is hereby authorized to
2 promulgate rules to carry out the intent of this chapter and to
3 exercise rule-making authority granted by article eight of
4 the constitution of West Virginia. Rules promulgated by the

5 judge of a circuit court, or the chief judge thereof, pursuant
6 to the provisions of this chapter shall be subordinate and
7 subject to the rules of the supreme court of appeals or the
8 orders of the chief justice thereof.

§50-1-17. Reference to justice of the peace; abolition of the office of constable.

1 On and after the first day of January, one thousand nine
2 hundred seventy-seven, the phrase "justice of the peace"
3 and the word "justice," when used in a context meaning
4 "justice of the peace," shall be construed to mean magistrate
5 as created by the provisions of this chapter. At such time the
6 office of constable shall be abolished, and the duties previously
7 performed by constables shall be assumed by deputy sheriffs or
8 by such other persons as elsewhere provided in this code.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

§50-2-2. Venue.

§50-2-3. Criminal jurisdiction.

§50-2-1. Civil jurisdiction.

1 Except as limited herein and in addition to jurisdiction
2 granted elsewhere to magistrate courts or justices of the peace,
3 magistrate courts shall have jurisdiction of all civil actions in
4 which the damages or the value of property sought is not more
5 than one thousand five hundred dollars. Magistrate courts
6 shall have jurisdiction of matters involving unlawful entry or
7 detainer of real estate so long as the title to such real estate
8 is not in dispute. Magistrate courts shall have jurisdiction of
9 actions on bonds given pursuant to the provisions of this
10 chapter.

11 Magistrate courts shall not have jurisdiction of actions in
12 equity, of matters in eminent domain, of matters in which the
13 title to real estate is in issue, of proceedings seeking satisfac-
14 tion of liens through the sale of real estate, of actions for false
15 imprisonment, of actions for malicious prosecution or of ac-
16 tions for slander or libel or of any of the extraordinary reme-
17 dies set forth in chapter fifty-three of this code.

18 Magistrates, magistrate court clerks and magistrate as-

19 sistant shall have the authority to administer any oath or
20 affirmation, to take any affidavit or deposition, unless otherwise
21 expressly provided by law, and to take, under such regulations
22 as are prescribed by law, the acknowledgment of deeds and
23 other writings.

§50-2-2. Venue.

1 The provisions of article one, chapter fifty-six of this
2 code, relating to venue of actions in circuit courts, shall
3 apply to venue of actions in magistrate courts as if the
4 same were set forth fully herein.

§50-2-3. Criminal jurisdiction.

1 In addition to jurisdiction granted elsewhere to magistrate
2 courts or a justice of the peace, magistrate courts shall have
3 jurisdiction of all misdemeanor offenses committed in the
4 county and to conduct preliminary examinations on warrants
5 charging felonies committed within the county. A magistrate
6 shall have the authority to issue arrest warrants in all criminal
7 matters, to issue warrants for search and seizure and, except
8 in cases involving capital offenses, to set and admit to bail.

9 Magistrate courts shall have the jurisdiction of violations of
10 subsection (c), section four hundred one, article four, chapter
11 sixty-a of this code under the provisions of section four hun-
12 dred seven of such article, and may discharge the defendant
13 under the provisions of section four hundred seven of said
14 article four. The exercise of such jurisdiction shall not pre-
15 clude the right of the accused to petition the circuit court
16 of the county for probation under the provisions of section
17 four, article twelve, chapter sixty-two of this code.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-1. Costs in civil actions.

§50-3-2. Costs in criminal proceedings.

§50-3-3. Disposition of fines, forfeitures and penalties.

§50-3-4. Disposition of costs; magistrate court fund.

§50-3-5. Security bond for costs.

§50-3-6. Collection of costs and fines.

§50-3-7. Records of magistrate court; reports.

§50-3-8. Audit.

§50-3-1. Costs in civil actions.

1 The following costs shall be charged in magistrate courts in
2 civil actions and shall be collected in advance:

3 (a) For filing and trying any civil action and for all
4 services connected therewith but excluding ser-
5 vices regarding enforcement of judgment _____ \$10.00

6 (b) For each service regarding enforcement of a
7 judgment including execution, suggestion, gar-
8 nishment and suggestee execution _____ \$ 3.00

9 (c) For each bond filed in a case _____ \$ 1.00

10 (d) For taking deposition of witness for each hour or
11 portion thereof _____ \$ 1.00

12 (e) For taking and certifying acknowledgment of a
13 deed or other writing or taking oath upon an
14 affidavit _____ \$.50

15 (f) For mailing any matter required or provided by
16 law to be mailed by certified or registered mail
17 with return receipt _____ \$ 1.00

18 Costs incurred in a civil action shall be reflected in any
19 judgment rendered thereon. The provisions of section one,
20 article two, chapter fifty-nine of this code, relating to the pay-
21 ment of costs by poor persons, shall be applicable to all costs
22 in civil actions.

§50-3-2. Costs in criminal proceedings.

1 In each criminal case tried in a magistrate court in which the
2 defendant is convicted there shall be imposed, in addition to
3 such other costs, fines, forfeitures or penalties as may be al-
4 lowed by law, costs in the amount of ten dollars. No such costs
5 shall be collected in advance.

6 A magistrate shall assess costs in the amount of two dollars
7 and fifty cents for issuing a sheep warrant, appointment and
8 swearing appraisers and docketing the same.

9 In each criminal case which must be tried by the circuit
10 court but in which a magistrate renders some service, costs in

11 the amount of ten dollars shall be imposed by the magistrate
12 court and shall be certified to the clerk of the circuit court in
13 accordance with the provisions of section six, article five, chap-
14 ter sixty-two of this code.

§50-3-3. Disposition of fines, forfeitures and penalties.

1 All fines, forfeitures and penalties collected in magistrate
2 courts in a criminal proceeding shall be submitted on or before
3 the tenth day of the month following the month of their
4 collection to the magistrate court clerk or, if there is no magis-
5 trate court clerk, to the clerk of the circuit court together with
6 such information as may be required by the rules of the su-
7 preme court and by the rules of the chief inspector of public
8 offices. Such moneys shall thereupon be paid to the sheriff
9 subject to, and to be distributed in accordance with the pro-
10 visions of section fifteen, article five, chapter seven of this
11 code.

§50-3-4. Disposition of costs; magistrate court fund.

1 All costs collected in magistrate courts in a civil or criminal
2 proceeding shall be submitted on or before the tenth day
3 of the month following the month of their collection to the
4 magistrate court clerk or, if there is no magistrate court clerk,
5 to the clerk of the circuit court along with such information as
6 may be required by the rules of the supreme court and by the
7 rules of the chief inspector of public offices. Such clerk shall
8 pay such costs into the special county fund hereafter created
9 during each fiscal year until there shall have been paid a sum
10 equal to ten thousand dollars multiplied by the number of
11 magistrates authorized for such county. All costs collected in
12 excess of such sum during a fiscal year shall be paid to the state.
13 Notwithstanding the provisions of section two, article nineteen,
14 chapter fifty of this code to the contrary, all costs and fees col-
15 lected by justices of the peace on or after the first day of July,
16 one thousand nine hundred seventy-six, shall be paid into said
17 special county fund hereafter created.

18 There is hereby created in each county a special county fund
19 designated as the magistrate court fund. No moneys shall be
20 appropriated from the fund except for the purposes provided

21 for in this section. Any money remaining in the magistrate
22 court fund on the thirtieth day of June, one thousand nine
23 hundred seventy-nine, and on the thirtieth day of June of each
24 year thereafter, shall be paid to the state.

25 A county may appropriate and spend from such fund such
26 sums as shall be necessary to defray the expenses of providing
27 bailiff and service of process services by the sheriff, to defray
28 the cost of acquiring or renting magistrate court offices and
29 providing utilities and telephones therefor, to defray the ex-
30 penses of such other services which by the terms of this chap-
31 ter are to be provided to magistrate court by the county and
32 to pay to justices of the peace such sums as they may be en-
33 titled to by law.

§50-3-5. Security bond for costs.

1 A magistrate may and upon the request of a defendant shall
2 require the posting of security by a nonresident plaintiff to
3 cover costs. Such security shall be in an amount and in such
4 form as the magistrate shall determine. In the event costs
5 remain unpaid by such plaintiff the magistrate court may satisfy
6 the same through the security posted and may proceed for such
7 purposes in the name of the defendant.

§50-3-6. Collection of costs and fines.

1 The magistrate court may issue execution or employ other
2 means of enforcing judgment to collect fines and costs imposed
3 in proceedings before the court and tax the cost thereof as a
4 part of the execution or other process. Such execution or other
5 process shall be directed to the sheriff for collection. The
6 sheriff shall collect the fees prescribed for his services from
7 the party from whom the fine or costs are being collected.
8 Money so collected shall be paid by the sheriff to the
9 magistrate court and shall be paid by the magistrate court in
10 the manner provided by law.

§50-3-7. Records of magistrate court; reports.

1 Records of the judicial transactions of magistrate court shall
2 be kept as required by the rules of the supreme court of ap-
3 peals. If, after judgment is rendered in a matter, no appeal is
4 taken within the time allotted, the records of such proceedings

5 shall be forwarded to the magistrate court clerk or, if there
6 is no magistrate court clerk, to the clerk of the circuit court.
7 Such records shall be maintained by such clerk in accordance
8 with the rules of the supreme court of appeals.

9 Records of the financial dealings of the magistrate court
10 shall be kept as may be required by the rules of the chief in-
11 spector of public offices, who shall promulgate such rules only
12 after consultation with the supreme court of appeals.

13 A magistrate court shall prepare and submit such reports as
14 may be required by the rules of the supreme court of appeals
15 or by the chief inspector of public offices.

§50-3-8. Audit.

1 Each magistrate court shall be subject to an annual financial
2 audit which shall be accomplished by the chief inspector of
3 public offices. A report of such audit shall be made to the
4 supreme court of appeals, the circuit court of the county and
5 the legislative auditor.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-1. Commencement of civil actions.

§50-4-2. Commencement of criminal actions.

§50-4-3. Appointment of counsel in criminal proceeding.

§50-4-4. Manner of service in civil cases.

§50-4-5. Return date in civil action; setting of trial date; failure to appear
or notify.

§50-4-6. Return date in criminal proceedings; setting trial date.

§50-4-7. Removal to another magistrate.

§50-4-8. Removal to circuit court.

§50-4-9. Counterclaim.

§50-4-10. Judgment before trial.

§50-4-11. Dismissal of actions for lack of jurisdiction.

§50-4-12. Dismissal of actions for failure to appear, testify, etc.

§50-4-1. Commencement of civil actions.

1 There shall be one form of civil action in magistrate court.
2 Civil actions shall be commenced by the payment of the fees
3 required by article three of this chapter and by providing any
4 magistrate or magistrate assistant with a concise statement,
5 either oral or written, of the nature of the cause of action.
6 Such statement must be sufficient to notify the defendant of
7 the subject matter of the action. The magistrate assistant shall

8 immediately prepare a summons in such form and containing
9 such information as may be required by the rules of the
10 supreme court of appeals. The summons shall be dated the
11 same day the request therefor is received and the appropriate
12 fees received, and the action shall be deemed commenced as of
13 that day. The magistrate assistant shall thereupon forward the
14 matter to the magistrate court clerk together with any service
15 of process fees which may have been collected.

16 Upon receipt of the matter by the magistrates court clerk,
17 such clerk shall docket the same in a central docket. Such clerk
18 shall thereupon assign the action for trial to the magistrate in
19 whose office it was filed unless it shall be necessary to assign
20 it to some other magistrate in order to maintain an equitable
21 distribution of cases among the magistrates. In the event it is
22 necessary to assign the matter to some other magistrate, such
23 clerk, as near as practicable, shall assign it to a magistrate
24 whose office is accessible to all parties and who can properly
25 serve the interests of the parties. The judge of the circuit court,
26 or the chief judge thereof if there is more than one judge of the
27 circuit court, shall by rule determine when it shall be necessary
28 to assign an action to a magistrate other than the magistrate
29 before whom it was filed in order to maintain such equitable
30 distribution of cases. After the matter is assigned, the magis-
31 trate court clerk shall make note of the assignment on the
32 summons, sign the summons and forward it, together with any
33 service of process fees which may have been collected, to the
34 sheriff for service of process.

§50-4-2. Commencement of criminal actions.

1 Criminal actions shall be commenced by warrant obtained
2 and executed in compliance with the provisions of article one,
3 chapter sixty-two of this code.

4 Even though any matter may be assigned to another magis-
5 trate for the purpose of preliminary examination or trial, in
6 addition to such assigned magistrate, the magistrate originating
7 such warrant shall retain the authority to admit to bail.

§50-4-3. Appointment of counsel in criminal proceeding.

1 In any criminal proceeding in a magistrate court in which
2 the applicable statutes authorize a sentence of confinement the

3 magistrate shall forthwith advise a defendant of his right to
4 counsel and his right to have counsel appointed if such defen-
5 dant cannot afford to retain counsel. In the event a defendant
6 requests that counsel be appointed and executes an affidavit
7 that he is unable to afford counsel, the magistrate shall stay
8 further proceedings and shall request the judge of the circuit
9 court, or the chief judge thereof if there is more than one
10 judge of the circuit court, to appoint counsel. Such judge shall
11 thereupon appoint counsel. If there is no judge sitting in the
12 county at the time of the request then the clerk of the circuit
13 court shall appoint counsel from a list of attorneys in ac-
14 cordance with the rules established by such judge of the circuit
15 court. Counsel shall be paid for his services in accordance with
16 the provisions of section one, article three, chapter sixty-two
17 of this code.

§50-4-4. Manner of service in civil cases.

1 Service of process in civil actions shall be made in the same
2 manner as is provided for service of process in trial courts of
3 record.

§50-4-5. Return date in civil action; setting of trial date; failure to appear or notify.

1 Each summons in a civil action shall notify the defendant
2 that he must appear within twenty days after service of the
3 summons upon him or that he must otherwise notify the
4 magistrate court by that time that he wishes to contest the
5 matter.

6 If the magistrate court is notified by the defendant that he
7 wishes to contest the matter a trial date shall be set and all
8 parties notified thereof. Such trial date shall be at least five
9 days from notification thereof unless all parties consent other-
10 wise thereto.

11 If no appearance or other notification is made within twenty
12 days after the service of the summons on the defendant, judg-
13 ment by default may be entered in accordance with the pro-
14 visions of section ten of this article.

§50-4-6. Return date in criminal proceedings; setting trial date.

1 When a warrant is executed in a criminal proceeding the
2 defendant shall be notified of the return date set by the court.

3 The defendant shall appear before the magistrate on or before
4 the return date. In the event a trial or preliminary examina-
5 tion is not expressly waived by such defendant, the magistrate
6 shall set a date for such trial or preliminary examination and
7 shall notify all parties.

§50-4-7. Removal to another magistrate.

1 Any party to a civil or criminal proceeding before a magis-
2 trate in any county wherein there is more than one magistrate
3 may file an affidavit that the magistrate before whom the mat-
4 ter is pending has a personal bias or prejudice either against
5 him or in favor of any opposite party or that such magistrate
6 has counseled with any opposite party with respect to the mer-
7 its of the proceeding. The affidavit shall state the facts and
8 reasons for belief in the truth thereof. The supreme court of
9 appeals shall provide a form affidavit which shall be made
10 available to all parties and which shall comply with the require-
11 ments of this section.

12 Upon the filing of such affidavit before the trial or hearing,
13 the magistrate shall transfer all matters relating to the case
14 to the magistrate court clerk, who shall thereupon assign and
15 transfer the matter to be heard by some other magistrate within
16 the county upon a rotation basis to be established by the
17 judge of the circuit court, or the chief judge thereof if there is
18 more than one judge of the circuit court. Such removal and
19 assignment shall be permitted, however, only if there is some
20 other magistrate in the county before whom the matter had
21 not been previously pending. No party shall be entitled to
22 cause such a removal more than once.

23 The magistrate to whom the matter is assigned shall set a
24 new return date not more than five days from his receipt of the
25 matter, shall notify all parties thereof, and shall proceed with
26 the matter as if it had been originally assigned to him.

§50-4-8. Removal to circuit court.

1 At any time before trial in a civil action involving more
2 than one hundred dollars any party may, upon payment of a
3 fee in the amount of ten dollars, cause such action to be re-
4 moved to the circuit court. The magistrate court, upon receiving

5 such fee and request for removal shall forward the same along
6 with all appropriate documents to the clerk of the circuit
7 court. Such fee shall be paid into the county treasury.
8 The matter shall then be heard by the circuit court.

§50-4-9. Counterclaim.

1 A defendant in a civil action may at any time within twenty
2 days after the service of process on him commence a separate
3 action as a counterclaim and if such counterclaim arises from
4 the same transaction or occurrence that is the subject matter of
5 the initial claim they shall be tried together. The requirements
6 of law relating to the payment of fees and service of process
7 shall apply to counterclaims. The failure to institute a counter-
8 claim permitted by this section shall not preclude the
9 institution of an action on such claim at a later date.

§50-4-10. Judgment before trial.

1 If a defendant in a civil action fails to appear or other-
2 wise notify the magistrate court within twenty days after the
3 service of the summons upon him that he wishes to contest the
4 action, the magistrate may enter judgment as justice may re-
5 quire as follows:

6 (a) The magistrate shall enter judgment by default only
7 upon affidavit or sworn testimony reflecting the nature of the
8 claim, whether or not it is for a sum certain or for a sum which
9 can by computation be made certain, the defendant's failure
10 to appear or otherwise notify the court within twenty days after
11 service of the summons upon him that he wishes to contest the
12 action and supporting the relief sought. In the event the plain-
13 tiff's claim is not for a sum certain or for a sum which can by
14 computation be made certain, the court shall require such fur-
15 ther proof by affidavit or sworn testimony as is necessary to
16 determine the propriety of the relief sought.

17 (b) No judgment by default shall be rendered against a
18 person who is an infant, incompetent person or incarcerated
19 convict unless such person is represented in the action by a
20 guardian ad litem, guardian, committee, curator or other like
21 fiduciary.

22 Upon motion made by the defendant within twenty days

23 after the entry of such judgment, the magistrate may, for good
24 cause shown, set aside the judgment and set the matter for
25 trial.

26 If a defendant offers to confess judgment at any time, the
27 magistrate shall take the same in writing and enter judgment for
28 the amount confessed plus costs. In the event the amount
29 claimed by plaintiff exceeds the amount confessed by defendant
30 the plaintiff may request that the matter be set for trial. If
31 plaintiff's recovery therein does not exceed the amount
32 confessed, costs shall be assessed against the plaintiff.

§50-4-11. Dismissal of actions for lack of jurisdiction.

1 If at any time a magistrate determines that an action
2 involves a matter outside of or an amount in excess of the
3 jurisdiction of the magistrate court, the action shall be dis-
4 missed without prejudice. Judgment shall be awarded against
5 the plaintiff in such event for any costs incurred by defendant.
6 A plaintiff may, at any time before such dismissal, forgive in
7 writing any amounts which may be in excess of the monetary
8 limitation of the court's jurisdiction and confer jurisdiction
9 thereby.

§50-4-12. Dismissal of actions for failure to appear, testify, etc.

1 A magistrate may render judgment against the plaintiff
2 dismissing his action with prejudice to a new action and
3 awarding costs to the defendant when (a) the plaintiff fails
4 to appear and prosecute his action at the proper time for
5 appearance; (b) the plaintiff fails or refuses to testify when
6 properly required to do so; or (c) the plaintiff fails to give
7 security for costs when properly required to do so. In
8 cases (a) and (b) if the plaintiff shows cause why his action
9 should not be dismissed, the magistrate may set aside such
10 judgment and continue the matter before him or may dismiss
11 the action without prejudice.

12 A magistrate shall dismiss a claim without prejudice if the
13 summons is defective or erroneous and cannot properly be
14 amended.

15 A magistrate may dismiss a claim without prejudice if the
16 plaintiff requests such dismissal before trial.

17 The dismissal of a claim shall not affect the right of any
18 party to proceed to trial upon a counterclaim.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-1. General rules of procedure.

§50-5-2. Continuances.

§50-5-3. Representatives for infant, incompetent or convict; appointment of guardian ad litem.

§50-5-4. Subpoenas.

§50-5-5. Privileged communications; persons incompetent to testify.

§50-5-6. Evidentiary depositions.

§50-5-7. Right to trial in criminal cases.

§50-5-8. Trial by jury.

§50-5-9. Entry of judgment.

§50-5-10. Setting aside judgment.

§50-5-11. Contempt.

§50-5-12. Appeals in civil cases.

§50-5-13. Appeals in criminal cases.

§50-5-1. General rules of procedure.

1 Except as the same may be inconsistent with the provisions
2 of this chapter or with rules adopted by the supreme court of
3 appeals, the provisions of law relating to trials and admissibility
4 of evidence in circuit courts shall apply to trials in magistrate
5 courts.

§50-5-2. Continuances.

1 A magistrate shall continue the holding of a trial or hearing
2 upon the motion of any party for a period of time not less than
3 five nor more than ten days, and such mandatory continuance
4 shall be available to each party once. A magistrate may con-
5 tinue the holding of a trial or hearing at any time upon his
6 own motion or, if good cause is shown, upon the motion of any
7 party. In criminal proceedings when the defendant is in custody,
8 the state shall not have the right to a continuance but may be
9 granted a continuance for no more than five days if good
10 cause is shown. In criminal proceedings when the defen-
11 dant is in custody, the magistrate may continue the matter no
12 more than once on his own motion but such continuance shall
13 not be for more than forty-eight hours.

§50-5-3. Representatives for infant, incompetent or convict; ap- pointment of guardian ad litem.

1 No infant, incompetent person or convict shall proceed or

2 be proceeded against in a civil action in magistrate court unless
3 the provisions of this section are complied with.

4 Whenever an infant, incompetent person or convict has a
5 duly qualified representative, such as a guardian, curator, com-
6 mittee or other like fiduciary, such representative may sue or
7 defend on behalf of the infant, incompetent person or con-
8 vict. If a person under any disability does not have a duly
9 qualified representative he may sue by his next friend. The
10 magistrate shall appoint some suitable person who shall not
11 be required to be an attorney at law as guardian ad litem for
12 an infant, incompetent person or convict not otherwise repre-
13 sented in an action.

§50-5-4. Subpoenas.

1 A magistrate or magistrate assistant shall, upon the request
2 of any party, issue a subpoena compelling the attendance and
3 testimony of a witness or a subpoena duces tecum compelling
4 the production of some writing or other object. The court shall
5 require the sheriff to enforce such subpoena or subpoena duces
6 tecum and may punish the willful disregard thereof by finding
7 such person in contempt in accordance with the provisions of
8 section ten of this article. Witness fees and mileage shall be cal-
9 culated and paid as in the circuit court.

§50-5-5. Privileged communications; persons incompetent to testify.

1 No person shall be compelled to testify at any proceeding in
2 magistrate court as to any communication privileged by law.
3 No person shall be compelled to testify as to any matter about
4 which he is deemed incompetent by law to testify.

§50-5-6. Evidentiary depositions.

1 In a civil case the evidentiary deposition of any witness
2 residing out of the county or unable to attend court may be
3 taken by any party upon reasonable notice to all other parties.

§50-5-7. Right to trial in criminal cases.

1 Every defendant charged in a magistrate court in a criminal
2 proceeding which is within the jurisdiction of the court shall
3 have the right to a trial on the merits in the magistrate court.

§50-5-8. Trial by jury.

1 Any party to a civil action is entitled to a trial by jury
2 when the amount in controversy exceeds twenty dollars or
3 involves possession to real estate. Any defendant in any
4 criminal action shall be entitled to a trial by jury, and any
5 verdict must be unanimous. A defendant in a criminal pro-
6 ceeding may waive a jury trial so long as he is advised of his
7 right to a jury trial and such waiver is made in writing. A mag-
8 istrate court jury shall consist of six persons, to be selected
9 from a panel of ten persons. The selection and summoning of
10 jurors shall be conducted in accordance with the rules and
11 regulations of the supreme court of appeals. Jurors shall be
12 paid by the state in accordance with such rules.

§50-5-9. Entry of judgment.

1 In every criminal case in which the defendant is in custody,
2 a magistrate shall enter judgment immediately upon the con-
3 clusion of the trial or hearing. In all other proceedings, a
4 magistrate shall enter judgment within twenty-four hours of
5 the conclusion of the trial or hearing.

§50-5-10. Setting aside judgment.

1 Upon motion made within twenty days after judgment by
2 any party in a civil action or by the defendant in a criminal
3 action, the magistrate who heard the matter may, upon good
4 cause shown, set aside judgment and order a new trial. All par-
5 ties shall be given notice of such motion and an opportunity to
6 be heard.

§50-5-11. Contempt.

1 A magistrate may punish for contempt of court a person
2 guilty of any of the following acts, and in no other case:

3 (a) Contemptuous or insolent behavior toward such mag-
4 istrate while engaged in the trial of a case or in any other
5 judicial proceeding;

6 (b) Any breach of the peace, willful disturbance, or
7 indecent conduct in the presence of such magistrate while so
8 engaged, or so near as to obstruct or interrupt the proceedings;

9 (c) Violence or threats of violence to such magistrate,
10 or any officer, juror, witness, or party going to, attending,
11 or returning from, any judicial proceeding before the court
12 with respect to anything done or to be done in the course of
13 such proceeding;

14 (d) Misbehavior of any officer of the county acting in his
15 official capacity with respect to any action or judicial pro-
16 ceeding had or pending before the court, or any process,
17 judgment, order or notice therein; or

18 (e) Willful resistance, in the presence of the magistrate, by
19 an officer of the court, juror, witness, party or other person
20 to any lawful process or order of the court.

21 A magistrate may, if necessary, issue a warrant of arrest
22 for such person, who shall be given an opportunity to be
23 heard. In the event such person is adjudged guilty of con-
24 tempt, the person may be fined not more than fifty dollars for
25 the first offense. For a second offense occurring during the
26 same proceeding the person may be fined not more than one
27 hundred dollars. For the third or any subsequent offense oc-
28 ccurring during the same proceeding, the person may be fined
29 not more than one hundred dollars, or imprisoned in the county
30 jail not more than ten days, or both fined and imprisoned.

§50-5-12. Appeals in civil cases.

1 Any person may appeal the judgment of a magistrate court to
2 the circuit court as a matter of right by requesting such appeal
3 not later than twenty days after such judgment is rendered
4 or not later than twenty days after a decision is rendered
5 upon a motion to set aside such judgment. Such person shall be
6 required to post a bond with good security in a reasonable
7 amount not less than the reasonable court costs of the appeal
8 nor more than the sum of the judgment and the reasonable
9 court costs of the appeal, upon the condition that such person
10 will satisfy the judgment and any court costs which may be
11 rendered against him on any such appeal. No bond shall be
12 required of any governmental agency or authority or of a per-
13 son who has filed an affidavit pursuant to section one, article
14 two, chapter fifty-nine of this code. If no appeal is perfected
15 within such twenty-day period, the circuit court of the county

16 may, not later than ninety days after the date of judgment,
17 grant an appeal upon a showing of good cause why such appeal
18 was not perfected within such twenty-day period. The filing or
19 granting of an appeal shall automatically stay further proceed-
20 ings to enforce the judgment. Trial in circuit court shall be
21 de novo.

§50-5-13. Appeals in criminal cases.

1 Any person convicted of an offense in a magistrate court
2 may appeal such conviction to circuit court by requesting such
3 appeal within twenty days of the sentencing for such con-
4 viction. The magistrate may require the posting of bond with
5 good security conditioned upon the appearance of the defen-
6 dant as required in circuit court, but such bond may not ex-
7 ceed the maximum amount of any fine which could be im-
8 posed for the offense. Such bond may be upon the defendant's
9 own recognizance. An appeal may be granted by a judge of
10 the circuit court of the county within ninety days from the date
11 of sentencing. The filing or granting of an appeal shall auto-
12 matically stay the sentence of the magistrate. Trial in circuit
13 court shall be de novo.

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

§50-6-2. Filing of transcript in office of circuit clerk; entry on lien docket.

§50-6-1. Enforcement of judgments.

1 The provisions of articles three, four, five, five-a, five-b
2 and six, chapter thirty-eight of this code, except as the same
3 are in conflict with the provisions of this chapter or are clearly
4 applicable only to courts of record, shall apply to the enforce-
5 ment of judgments rendered in magistrate court and process
6 therefor shall issue from magistrate court. Process issued in
7 violation of such provisions shall be void. The form of all such
8 process shall be in accord with the rules of the supreme court
9 of appeals. No such process shall issue until after twenty days
10 after the judgment is rendered or, if a motion to set aside such
11 judgment is then pending, until after twenty days after the de-
12 termination of such motion.

§50-6-2. Filing of transcript in office of circuit clerk; entry on lien docket.

1 A certified transcript of judgment rendered by a magistrate
2 court may be filed in the office of the circuit court upon pay-
3 ment of a fee of one dollar. The circuit clerk shall keep such
4 records and indices as may be required by the rules of the su-
5 preme court of appeals. Such judgments may also be docketed
6 in the judgment lien book kept in the office of the clerk of the
7 county commission in the same manner and with the same
8 effect as circuit court judgments.

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-39. Illegal voting; affidavit; arrest; procedure.

1 If at any time during the election any qualified voter shall
2 make affidavit, before a commissioner of election, that any
3 person who has voted is an illegal voter in such precinct, the
4 person accused shall at once be arrested by any dep-
5 uty sheriff or other person designated by the election com-
6 missioners to make the arrest, and by him delivered to the civil
7 authorities. Any person desiring to make such affidavit shall be
8 admitted to the election room for that purpose. Immediately
9 after the close of the election, the commissioners of election
10 shall deliver such affidavit to some justice of the peace in the
11 magisterial district, or magistrate in the county, who shall pro-
12 ceed thereon as if the affidavit had been made before him.

**CHAPTER 5A. DEPARTMENT OF FINANCE
AND ADMINISTRATION.**

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

**§5A-1-2b. Security officers; appointment; oath; carrying weapons;
powers and duties generally, etc.**

1 In addition to the other powers given and assigned to the
2 commissioner in this chapter, he is hereby authorized to ap-
3 point bona fide residents of this state to act as security officers
4 upon any premises owned or leased by the state of West Vir-
5 ginia and under the jurisdiction of the commissioner, subject
6 to the conditions and restrictions hereinafter imposed. Before

7 entering upon the performance of his duties as such security
8 officer, each person so appointed shall qualify therefor in the
9 same manner as is required of county officers by taking and
10 filing an oath of office as required by article one, chapter
11 six of this code. No such person shall have authority to carry
12 a gun or any other dangerous weapon until he shall have ob-
13 tained a license therefor in the manner prescribed by section
14 two, article seven, chapter sixty-one of this code.

15 It shall be the duty of any person so appointed and qualified
16 to preserve law and order on any premises under the jurisdic-
17 tion of the commissioner to which he may be assigned by the
18 commissioner. For this purpose he shall as to offenses com-
19 mitted on such premises have and may exercise all the powers
20 and authority and shall be subject to all the responsibilities of
21 a deputy sheriff of the county. The assignment of security offi-
22 cers to any premises under the jurisdiction of the commissioner
23 shall not be deemed to supersede in any way the authority or
24 duty of other peace officers to preserve law and order on such
25 premises.

26 The commissioner may at his pleasure revoke the authority
27 of any such officer by filing a notice to that effect in the office
28 of the clerk of each county in which his oath of office was
29 filed, and in the case of officers licensed to carry a gun or
30 other dangerous weapon by notifying the clerk of the circuit
31 court of the county in which the license therefor was granted.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-1. Powers and duties of mayor.

§8-10-2. Police court or municipal judge for municipalities.

§8-10-1. Powers and duties of mayor.

1 When not otherwise provided by charter provision or general
2 law, the mayor of every municipality shall be the chief execu-
3 tive officer of such municipality, shall have the powers and
4 authority granted in this section, and shall see that the or-
5 dinances, orders, bylaws, acts, resolutions, rules and regula-

6 tions of the governing body thereof are faithfully executed.
7 He shall have jurisdiction to hear and determine any and
8 all alleged violations thereof and to convict and sentence
9 persons therefor. He shall also, until the first day of January,
10 one thousand nine hundred seventy-seven, be ex officio a
11 justice and conservator of the peace within the municipality,
12 and shall, within the same, have and exercise all of the powers,
13 both civil and criminal, and perform all duties vested by
14 law in a justice of the peace, except that he shall have no
15 jurisdiction in civil cases or causes of action arising without
16 the corporate limits of the municipality. He shall have, until
17 the first day of January, one thousand nine hundred seventy-
18 seven, the same power to issue attachments in civil suits as a
19 justice of his county has, though the cause of action arose
20 without the corporate limits of his municipality, but he shall
21 have no power to try the same and such attachments shall be
22 returnable and be heard before some justice of his county.
23 Upon complaint he shall have authority to issue a search war-
24 rant in connection with the violation of a municipal ordinance.
25 Any search warrant, warrant of arrest or other process issued
26 by him may be directed to the chief of police or any member
27 of the police department or force of the municipality, and the
28 same may be executed at any place within the county or
29 counties in which the municipality is located. He shall have
30 control of the police of the municipality and may appoint
31 special police officers whenever he deems it necessary, except
32 when otherwise provided by law, and subject to the police
33 civil service provisions of article fourteen of this chapter if
34 such civil service provisions are applicable to his municipality,
35 and it shall be his duty especially to see that the peace and
36 good order of the municipality are preserved, and that persons
37 and property therein are protected; and to this end he may
38 cause the arrest and detention of all riotous and disorderly
39 individuals in the municipality before issuing his warrant
40 therefor. He shall have power to issue executions for all
41 fines, penalties and costs imposed by him, or he may require
42 the immediate payment thereof, and in default of such pay-
43 ment, he may commit the party in default to the jail of the
44 county or counties in which such municipality is located, or
45 other place of imprisonment within the corporate limits of
46 such municipality, if there be one, until the fine or penalty

47 and costs shall be paid, but the term of imprisonment in such
48 case shall not exceed thirty days. He shall, from time to
49 time, recommend to the governing body such measures as he
50 may deem needful for the welfare of the municipality. The
51 expense of maintaining any individual committed to a county
52 jail by him, except it be to answer an indictment, or, until the
53 first day of January, one thousand nine hundred seventy-seven,
54 be under the provisions of sections eight and nine, article
55 eighteen, chapter fifty of this code, shall be paid by the muni-
56 cipality and taxed as part of the costs of the proceeding.

§8-10-2. Police court or municipal judge for municipalities.

1 Notwithstanding any charter provision to the contrary, any
2 city may provide by charter provision and any municipality may
3 provide by ordinance for the creation and maintenance of a
4 police or municipal court, for the appointment or election of
5 an officer to be known as police court judge or municipal
6 court judge, and for his compensation, and authorize the
7 exercise by such court or judge of such of the jurisdiction and
8 the judicial powers, authority and duties set forth in section
9 one of this article and similar or related judicial powers,
10 authority and duties enumerated in any applicable charter
11 provisions, as set forth in the charter or ordinance. Such
12 court or judge shall in all events have the criminal jurisdiction
13 of a justice of the peace or magistrate court, but such
14 jurisdiction shall expire on the first day of January, one
15 thousand nine hundred seventy-seven.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9. OFFENSES GENERALLY.

§16-9-8. Jurisdiction of courts.

1 Until the first day of January, one thousand nine hundred
2 seventy-seven, justices of the peace and municipal judges shall
3 have concurrent jurisdiction with the circuit courts of this
4 state for violations under sections one to seven, both inclusive,
5 of this article.

CHAPTER 18. EDUCATION.

Article

2. State Board of Education.

26. West Virginia Board of Regents.

ARTICLE 2. STATE BOARD OF EDUCATION.**§18-2-13h. Acquisition and operation of college or university parking facilities.**

1 The board of regents is hereby authorized to construct,
2 maintain and operate automobile parking facilities upon any
3 premises owned or leased at any college or university under its
4 jurisdiction for use by students, faculty, staff and visitors. Such
5 facilities shall be open to use on such terms and subject to such
6 reasonable regulations as may be prescribed by the board of
7 regents. A summary of the regulations shall be posted con-
8 spicuously in each parking area.

9 The board of regents shall have authority to charge fees for
10 use of the parking facilities under its control. All moneys col-
11 lected for such use shall be paid into a special fund which is
12 hereby created in the state treasury. The moneys in such fund
13 shall be used first to pay the cost of maintaining and operating
14 such facilities, but any excess not needed for this purpose may
15 be used for the acquisition of property by lease or purchase and
16 the construction thereon of additional parking facilities. Any
17 money in the fund not needed immediately for the acquisition,
18 construction, maintenance or operation of such facilities may
19 be temporarily invested by the institution in the state sinking
20 fund.

21 Whenever a vehicle is parked on any college or university
22 parking facility in violation of the posted regulations, the insti-
23 tution shall have authority to remove the vehicle, by towing or
24 otherwise, to an established garage or parking lot for storage
25 until called for by the owner or his agent. The owner shall be
26 liable for the reasonable cost of such removal and storage, and
27 until payment of such cost the garage or parking lot operator
28 may retain possession of the vehicle subject to a lien for the
29 amount due. Notice to this effect shall be posted conspicuously
30 in each parking area. The garage or parking lot operator may
31 enforce his lien for towing and storage in the manner provided
32 in section fourteen, article eleven, chapter thirty-eight of this
33 code, for the enforcement of other liens.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**§18-26-8a. Security officers; appointment; qualifications; authority; compensation and removal.**

1 The West Virginia board of regents is hereby authorized
2 to appoint bona fide residents of this state to act as security
3 officers upon any premises owned or leased by the state of West
4 Virginia and under the jurisdiction of the board of regents,
5 subject to the conditions and restrictions hereinafter imposed.
6 Before entering upon the performance of his duties as such
7 security officer in any county, each person so appointed shall
8 qualify therefor in the same manner as is required of county
9 officers by the taking and filing an oath of office as required
10 by article one, chapter six of this code and by posting an
11 official bond as required by article two, chapter six of this
12 code. No such person shall have authority to carry a gun or
13 any other dangerous weapon until he shall have obtained a
14 license therefor in the manner prescribed by section two, article
15 seven, chapter sixty-one of this code.

16 It shall be the duty of any person so appointed and quali-
17 fied to preserve law and order on any premises under the jur-
18 isdiction of the board of regents to which he may be assigned
19 by the president of the college or university. For this pur-
20 pose he shall as to offenses committed on such premises have
21 and may exercise all the powers and authority and shall be
22 subject to all the responsibilities of a deputy sheriff of the
23 county. The assignment of security officers to any premises
24 under the jurisdiction of the board shall not be deemed to
25 supersede in any way the authority or duty of other peace offi-
26 cers to preserve law and order on such premises. In addition,
27 the security officers appointed under provisions of this section
28 shall have authority to assist local peace officers on public high-
29 ways in the control of traffic in and around premises owned by
30 the state of West Virginia whenever such traffic is generated as
31 a result of athletic or other activities conducted or sponsored
32 by a state college or university.

33 The salary of all such security officers shall be paid by the
34 board of regents. Each institution may furnish each such secur-
35 ity officer with an official uniform to be worn while on duty

36 and shall furnish and require each such officer while on duty
 37 to wear a shield with an appropriate inscription and to carry
 38 credentials certifying to his identity and to his authority as a
 39 security officer.

40 The board of regents may at its pleasure revoke the authority
 41 of any such officer and the president of the college or univer-
 42 sity shall report the termination of employment of any such
 43 security officer by filing a notice to that effect in the office of
 44 the clerk of each county in which his oath of office was filed,
 45 and in the case of officers licensed to carry a gun or other
 46 dangerous weapon by notifying the clerk of the circuit court of
 47 the county in which the license therefor was granted.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

§59-1-28. Use and disposition of fees of sheriffs, clerks and prosecuting attorneys.

§59-1-14. Fees to be charged by sheriffs.

1	A sheriff shall charge and collect the following fees:	
2	For serving on any person a declaration in ejectment,	
3	or an order, notice, summons or other process where	
4	the body is not taken, except a subpoena served	
5	on a witness, and making return thereof	\$3.00
6	For summoning a witness	3.00
7	For serving on any person an attachment or other	
8	process under which the body is taken	3.00
9	For levying an attachment on real estate and making	
10	the return	3.00
11	For making any other levy	3.00
12	For conveying a prisoner to or from jail, for each mile	
13	of necessary travel either in going or returning15
14	For taking any bond	1.00
15	When a jury is sworn in court, for summoning and	
16	impaneling such jury	1.00

- 17 For serving a writ of possession 3.00
18 For issuing receipt to purchaser at delinquent tax sale 1.00

19 The county commission, giving due regard to the cost there-
20 of, may from time to time prescribe the amount which the
21 sheriff may charge for keeping any property or in removing any
22 property. When, after distraining or levying, he neither sells nor
23 receives payment, and either takes no bond or takes one which
24 is not forfeited, he shall, if guilty of no default, have (in addi-
25 tion to the one dollar for a bond, if one was taken) a fee of three
26 dollars, unless this be more than half of what his commission
27 would have amounted to if he had received payment; in which
28 case he shall (whether a bond was taken or not) have a fee of
29 one dollar at the least, and so much more as is necessary to
30 make the said half of his commission. The commission to be
31 included in a forthcoming bond (when one is taken) shall be
32 five percent on the first three hundred dollars of the money
33 for which the distress or levy is made, and two percent on the
34 residue of such money; but such commission shall not be
35 received, in whole or in part, except as hereinbefore provided,
36 unless the bond be forfeited, or the amount (including the
37 commission) be paid to the plaintiff. An officer receiving
38 payment in money, or selling property, shall have the like
39 commission of five percent on the first three hundred dollars
40 of the money paid or proceeds from such sale, and two percent
41 on the residue, except that when such payment or sale is
42 on an execution on a forthcoming bond, his commission shall
43 be only half what it would be if the execution were not on
44 such bond.

§59-1-28. Use and disposition of fees of sheriffs, clerks and prosecuting attorneys.

1 All fees, costs, percentages, penalties, commissions, al-
2 lowances, compensation, income and all other perquisites
3 of whatever kind which by law may now or hereafter be col-
4 lected or received as compensation for services by any clerk
5 of the county commission, sheriff, clerk of the circuit court or
6 of any court of limited jurisdiction, and prosecuting attorney
7 shall be collected and received by such officer for the sole
8 use of the treasury of the county in which he is an officer,

9 and shall be held as public moneys belonging to the county
10 fund, and shall be accounted for and paid over as such
11 in the manner hereinafter provided. Nothing in this article
12 shall be construed to require any county officer to pay into
13 the county treasury any fees earned prior to the twenty-first
14 day of May, nineteen hundred and fifteen. Fees are held to
15 be earned at the time the service is rendered and not at the
16 time the matter is finally adjudicated.

17 Notwithstanding any provision of law to the contrary, all
18 fees collected by a sheriff for service of all manner of process
19 from magistrate court, in addition to such other funds as
20 may be provided by the county commission, shall be dedicated
21 by the county commission to the office of sheriff for providing
22 bailiff and service of process services for magistrate court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-41. Willful injury to railroad property; shooting or throwing missiles into passenger car; misconduct of passenger; employees conservators of the peace; special railroad policemen; penalties.

1 Any person who shall willfully and unlawfully injure, impair,
2 weaken, destroy or misplace any building, bridge, rail, track,
3 sidetrack, switch, rail bonds, spur track, work engine, machine,
4 locomotive, handcar, depot, car, trestle, telegraph line, tele-
5 graph pole, telegraph wire, telegraph instrument, or any other
6 instrument, machine, invention, or mechanical or electrical
7 appliance whatever, which may be, or now is used by any
8 company operating or using any railroad or traction line or
9 system, or other line or work of internal improvement, in this
10 state; or who shall obstruct any corporation which is the owner
11 or lessee of any railroad or traction line or system, or other
12 work of internal improvement, in this state, in the use of any
13 such property, shall be guilty of a misdemeanor, and, upon con-
14 viction, shall be fined not exceeding one thousand dollars and
15 imprisoned not exceeding six months. If the death of any per-
16 son occur in consequence of any such unlawful act, the per-
17 son or persons committing the same shall be guilty of murder

18 and punished accordingly. Or if any person on a train, or loco-
19 motive, or passenger car, on any railroad or traction line or
20 system, is maimed or disfigured by reason of any such unlaw-
21 ful act, the person convicted of causing the same shall be guilty
22 of a felony, and shall be confined in the penitentiary not less
23 than one nor more than twenty years.

24 If any person shall shoot or throw stones, or other dangerous
25 missiles at or into any passenger car, or other railroad or trac-
26 tion car used for carrying passengers or other persons, while
27 any such passenger or other person is within the same, he shall
28 be guilty of a felony, and, upon conviction, shall be confined
29 in the penitentiary not less than one nor more than ten years.
30 And if any person, whether a passenger or not, shall, while on
31 any passenger car or on any train of cars, behave in a riotous
32 or disorderly manner, he shall be guilty of a misdemeanor,
33 and, upon conviction, shall be fined not less than twenty-five
34 nor more than two hundred dollars, and may, in the discretion
35 of the court, be confined in jail not less than one nor more than
36 six months, and may be ejected from such car or train by the
37 person or persons in charge thereof; and such force as is neces-
38 sary for that purpose may be used by such person or persons
39 in charge of such passenger car or train of cars, with such
40 other persons as they may call to their aid.

41 The conductor of every passenger car and flagmen and
42 brakemen employed on such car, as well as the conductor of
43 every train of railroad or traction cars, shall have all the
44 powers of a conservator of the peace while in charge of such
45 car or train.

46 Any railroad company owning, or leasing and operating, or
47 using any railroad or traction line or system lying wholly or
48 partially within this state, whether such railroad be operated
49 by steam or electric power, may apply to the governor to ap-
50 point such citizen or citizens of this state as such railroad com-
51 pany may designate, to act as special police officers for such
52 railroad or traction company, with the consent of such citizen
53 or citizens; and the governor may, upon such application, ap-
54 point and commission such person or persons, or so many of
55 them as he may deem proper, as such special police officers.

56 Every police officer so appointed shall appear before some
57 person authorized to administer oaths and take and subscribe
58 the oath prescribed in the fifth section of the fourth article of
59 the constitution, and shall file such oath with the clerk of the
60 county commission, or other tribunal in lieu thereof, of the
61 county in which he shall reside. He shall also file certified cop-
62 ies of such oath in the office of the secretary of state, and in the
63 office of the clerk of the county commission, or other tribunal
64 established in lieu thereof, of each county through which such
65 railroad or any portion thereof may extend. Every police offi-
66 cer appointed under the provisions of this section shall be a
67 conservator of the peace within each county in which any part
68 of such railroad may be situated, and in which such oath or a
69 certified copy thereof shall have been filed with the clerk of
70 the county commission or other tribunal established in lieu
71 thereof; and, in addition thereto, he shall possess and may exer-
72 cise all the powers and authority, and shall be entitled to all the
73 rights, privileges and immunities within such counties, as are
74 now or hereafter may be vested in or conferred upon a deputy
75 sheriff of such county. Any appointment made by the gover-
76 nor under the provisions of this section may be revoked by him
77 for good cause shown, and such police officers may be removed
78 from office for official misconduct, incompetence, habitual
79 drunkenness, neglect of duty or gross immorality, in the same
80 manner in which regularly elected or appointed county officers
81 may be removed from office. Whenever any such railroad
82 company shall desire to dispense with the services of any such
83 police officer, it may file a notice to that effect, under its
84 corporate seal, attested by its secretary, in each of the several
85 offices in which such oath or certified copy thereof shall have
86 been filed; and, thereupon, the powers of such police officer
87 shall cease and determine. Such police officers may wear such
88 uniform and badge of authority, or either, as the railroad com-
89 pany, upon whose application they were appointed, may de-
90 signate, and such railroad company shall pay them for all
91 services rendered by them pursuant to such appointment.

CHAPTER 34

(S. B. 90—Originating in the Senate Committee on the Judiciary)

[Passed January 28, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to extending the time for the filing of certificate of candidacy for the office of magistrate.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven, to read as follows:

ARTICLE 20. MAGISTRATE COURTS.

§50-20-7. Extension of time for filing certificate of candidacy.

- 1 For the purpose of the election to be held in the year
- 2 one thousand nine hundred seventy-six, the last day for
- 3 filing a certificate of candidacy for the office of magistrate
- 4 is extended through the twenty-seventh day of February
- 5 of that year.

;

CHAPTER 35

(Com. Sub. for H. B. 1096—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 12, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of the justices of the supreme court of appeals.

Be it enacted by the Legislature of West Virginia:

That section ten-a, article one, chapter fifty-one of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

- 1 The salary of each of the justices of the supreme court of
- 2 appeals shall be thirty-five thousand dollars per year.

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CHAPTER 36

(Com. Sub. for S. B. 491—By Mr. Willis, Mr. Steptoe and Miss Herndon)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to the adoption of the uniform certification of questions of law act; setting forth power of supreme court of appeals of West Virginia to answer questions certified to it; method of invoking power; contents of certification order; preparation of certification order; costs of certification; briefs and arguments; providing for written opinion; power to certify; providing for procedure on certification; severability; construction; and providing a short title.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. UNIFORM CERTIFICATION OF QUESTIONS OF LAW ACT.

- §51-1A-1. Power to answer.
- §51-1A-2. Method of invoking.
- §51-1A-3. Contents of certification order.
- §51-1A-4. Preparation of certification order.
- §51-1A-5. Costs of certification.
- §51-1A-6. Briefs and arguments.

§51-1A-7. Opinion.

§51-1A-8. Power to certify.

§51-1A-9. Procedure on certifying.

§51-1A-10. Severability.

§51-1A-11. Construction.

§51-1A-12. Short title.

§51-1A-1. Power to answer.

1 The supreme court of appeals of West Virginia may
2 answer questions of law certified to it by the supreme
3 court of the United States, a court of appeals of the
4 United States, a United States district court or the highest
5 appellate court or the intermediate appellate court of
6 any other state, when requested by the certifying court
7 if there are involved in any proceeding before it ques-
8 tions of law of this state which may be determinative of
9 the cause then pending in the certifying court and as to
10 which it appears to the certifying court there is no con-
11 trolling precedent in the decisions of the supreme court
12 of appeals of this state.

§51-1A-2. Method of invoking.

1 This article may be invoked by an order of any of the
2 courts referred to in section one of this article upon the
3 court's own motion or upon the motion of any party to
4 the cause.

§51-1A-3. Contents of certification order.

1 A certification order shall set forth:
2 (1) The questions of law to be answered; and
3 (2) A statement of all facts relevant to the questions
4 certified and showing fully the nature of the controversy
5 in which the questions arose.

§51-1A-4. Preparation of certification order.

1 The certification order shall be prepared by the certi-
2 fying court, signed by the judge presiding at the hearing,
3 and forwarded to the supreme court of appeals of West
4 Virginia by the clerk of the certifying court under its
5 official seal. The supreme court of appeals of West Vir-
6 ginia may require the original or copies of all or of any
7 portion of the record before the certifying court to be
8 filed with the certification order, if, in the opinion of

9 the supreme court, the record or portion thereof may be
10 necessary in answering the questions.

§51-1A-5. Costs of certification.

1 Fees and costs shall be the same as in civil appeals
2 docketed before the supreme court of appeals and shall be
3 equally divided between the parties unless otherwise
4 ordered by the certifying court in its order of certifica-
5 tion.

§51-1A-6. Briefs and arguments.

1 Proceedings in the supreme court shall be those pro-
2 vided in the rules of the supreme court governing briefs
3 and arguments.

§51-1A-7. Opinion.

1 The written opinion of the supreme court stating the
2 law governing the questions certified shall be sent by the
3 clerk under the seal of the supreme court to the certify-
4 ing court and to the parties.

§51-1A-8. Power to certify.

1 The supreme court of appeals of West Virginia, on its
2 own motion or the motion of any party, may order
3 certification of questions of law to the highest court of
4 any state when it appears to the certifying court that
5 there is involved in any proceeding before the court a
6 question or questions of law of the receiving state which
7 may be determinative of the cause then pending in the
8 certifying court, and it appears to the certifying court
9 that there are no controlling precedents in the decisions
10 of the highest court or intermediate appellate courts of
11 the receiving state.

§51-1A-9. Procedure on certifying.

1 The procedures for certification from this state to the
2 receiving state shall be those provided in the laws of the
3 receiving state.

§51-1A-10. Severability.

1 If any provision of this article or the application thereof
2 to any person, court or circumstance is held invalid, the

3 invalidity does not affect other provisions or applica-
4 tions of the act which can be given effect without the
5 invalid provision or application, and to this end the
6 provisions of this act are severable.

§51-1A-11. Construction.

1 This article shall be construed as to effectuate its
2 general purpose to make uniform the law of those states
3 which enact it.

§51-1A-12. Short title.

1 This article may be cited as the uniform certification of
2 questions of law act.

CHAPTER 37

(Com. Sub. for S. B. 322—By Mr. Palumbo, Mr. Hamilton, Mr. Nelson,
Mr. Rogers, Mr. Williams and Mr. Willis)

[Passed March 17, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one-ff and one-gg, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one of said article, relating to providing for thirty-one judicial circuits; establishing the number of judges of each judicial circuit; providing for additional circuit court judges; relating to the expiration of the terms of office of all circuit court judges; establishing terms of office for newly created circuit court judges; providing legislative findings and declarations; relating to the holding of elections for circuit court judges; extending the time permitted for the filing of certificates of candidacy for newly created circuit court judges; and relating to terms of court.

Be it enacted by the Legislature of West Virginia:

That sections one-ff and one-gg, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one of said article be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS; JUDGES.**§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.**

1 (a) The state shall be divided into the following
2 judicial circuits with the following number of judges,
3 which number shall include those judges of statutory
4 courts of record of limited jurisdiction who became
5 circuit court judges by virtue of the judicial reor-
6 ganization amendment to the West Virginia consti-
7 tution:

8 The counties of Brooke, Hancock and Ohio shall con-
9 stitute the first circuit and shall have four judges; the
10 counties of Marshall, Tyler and Wetzel shall constitute
11 the second circuit and shall have two judges; the coun-
12 ties of Doddridge, Pleasants and Ritchie shall consti-
13 tute the third circuit and shall have one judge; the
14 counties of Wood and Wirt shall constitute the fourth
15 circuit and shall have three judges; the counties of Cal-
16 houn, Jackson and Roane shall constitute the fifth cir-
17 cuit and shall have one judge; the county of Cabell shall
18 constitute the sixth circuit and shall have three judges;
19 the county of Logan shall constitute the seventh circuit
20 and shall have two judges; the county of McDowell shall
21 constitute the eighth circuit and shall have two judges;
22 the county of Mercer shall constitute the ninth circuit
23 and shall have two judges; the county of Raleigh shall
24 constitute the tenth circuit and shall have two judges;
25 the counties of Greenbrier, Monroe, Pocahontas and
26 Summers shall constitute the eleventh circuit and shall
27 have one judge; the county of Fayette shall constitute
28 the twelfth circuit and shall have two judges; the
29 county of Kanawha shall constitute the thirteenth cir-
30 cuit and shall have seven judges; the counties of Brax-
31 ton, Clay, Gilmer and Webster shall constitute the four-
32 teenth circuit and shall have two judges; the county
33 of Harrison shall constitute the fifteenth circuit and
34 shall have two judges; the county of Marion shall con-
35 stitute the sixteenth circuit and shall have two judges;
36 the county of Monongalia shall constitute the seven-
37 teenth circuit and shall have two judges; the county of

38 Preston shall constitute the eighteenth circuit and shall
39 have one judge; the counties of Barbour and Taylor shall
40 constitute the nineteenth circuit and shall have one
41 judge; the county of Randolph shall constitute the twenty-
42 tieth circuit and shall have one judge; the counties of
43 Grant, Mineral and Tucker shall constitute the twenty-
44 first circuit and shall have two judges; the counties of
45 Hampshire, Hardy and Pendleton shall constitute the
46 twenty-second circuit and shall have one judge; the coun-
47 ties of Berkeley, Jefferson and Morgan shall constitute
48 the twenty-third circuit and shall have one judge; the
49 county of Wayne shall constitute the twenty-fourth cir-
50 cuit and shall have one judge; the counties of Lincoln
51 and Boone shall constitute the twenty-fifth circuit and
52 shall have two judges; the counties of Lewis and
53 Upshur shall constitute the twenty-sixth circuit and
54 shall have one judge; the county of Wyoming shall con-
55 stitute the twenty-seventh circuit and shall have one
56 judge; the county of Nicholas shall constitute the twenty-
57 eighth circuit and shall have one judge; the counties
58 of Mason and Putnam shall constitute the twenty-ninth
59 circuit and shall have two judges; the county of Mingo
60 shall constitute the thirtieth circuit and shall have one
61 judge; and the counties of Berkeley, Jefferson and
62 Morgan shall constitute the thirty-first circuit and shall
63 have one judge.

64 (b) The term of office of the additional circuit court
65 judge of each of the following judicial circuits created
66 and established by the provisions of subsection (a) of
67 this section, viz., the seventh, twelfth, thirteenth, four-
68 teenth, seventeenth, twenty-first, twenty-fifth and twen-
69 ty-ninth judicial circuits, shall commence on the first
70 day of January, one thousand nine hundred seventy-
71 seven, and shall end on the thirty-first day of De-
72 cember, one thousand nine hundred eighty-four.

73 (c) Except as provided in subsections (a), (d) and
74 (e) of this section, the terms of office of all circuit court
75 judges in office on the effective date of this section, in-
76 cluding the terms of office of the judges of those statu-
77 tory courts of record of limited jurisdiction who became

78 circuit court judges by virtue of the judicial reorga-
79 nization amendment to the West Virginia constitution,
80 shall expire on the thirty-first day of December, one
81 thousand nine hundred seventy-six. Thereafter, the
82 terms of office of such circuit court judges shall com-
83 mence on the first day of January, one thousand nine
84 hundred seventy-seven, and shall expire on the thirty-
85 first day of December, one thousand nine hundred eighty-
86 four.

87 (d) The terms of office of the judges of the first,
88 sixth, eighth, thirteenth and sixteenth judicial circuits
89 who became circuit court judges by virtue of the judicial
90 reorganization amendment to the West Virginia con-
91 stitution and who were, respectively, the judges of the
92 following statutory courts of record of limited juris-
93 diction, viz., intermediate court of Ohio county; domestic
94 relations court of Cabell county; intermediate court of
95 McDowell county; common pleas court of Kanawha
96 county (Division I); domestic relations court of Kanawha
97 county; and the criminal court of Marion county, shall
98 expire on the thirty-first day of December, one thousand
99 nine hundred eighty-four.

100 (e) The Legislature hereby finds and declares that
101 the purpose of this section is to implement the pro-
102 visions of the judicial reorganization amendment to the
103 West Virginia constitution; that the terms of office of
104 all circuit court judges, including the judges of statutory
105 courts of record of limited jurisdiction who became cir-
106 cuit court judges by virtue of the judicial reorganization
107 amendment to the West Virginia constitution, should
108 expire on the same date and such judges should be
109 elected at the same general election; that the legislative
110 intent in presenting said judicial reorganization amend-
111 ment to the voters of the state for ratification was that
112 no judge of a statutory court of record of limited juris-
113 diction who would become a circuit court judge by
114 virtue of said judicial reorganization amendment would
115 have his term of office decreased by the ratification of
116 said judicial reorganization amendment or be forced to
117 run for reelection any sooner than he otherwise would

118 have had to have run for reelection if said judicial re-
119 organization amendment had not been ratified; and that
120 said judicial reorganization amendment was ratified by
121 the voters of the state at the same general election at
122 which the judge of the former intermediate court of
123 Raleigh county and the judge of the former intermediate
124 court of Kanawha county were elected. Consistent with
125 such findings and declarations, the terms of office of
126 the judges of the tenth and thirteenth judicial circuits
127 who became circuit court judges by virtue of the judi-
128 cial reorganization amendment to the West Virginia
129 constitution, and who were, respectively, the judges of
130 the intermediate court of Raleigh county and the in-
131 termediate court of Kanawha county, which terms com-
132 menced the first day of January, one thousand nine
133 hundred seventy-five, shall expire on the thirty-first
134 day of December, one thousand nine hundred eighty-
135 four.

136 (f) The election of every circuit court judge whose
137 term of office begins on the first day of January, one
138 thousand nine hundred seventy-seven, and ends on the
139 thirty-first day of December, one thousand nine hundred
140 eighty-four, shall be held on the Tuesday next after the
141 first Monday in November, one thousand nine hundred
142 seventy-six, and every eighth year thereafter. The elec-
143 tion for all other circuit court judges shall be held on
144 the Tuesday next after the first Monday in November,
145 one thousand nine hundred eighty-four, and every eighth
146 year thereafter.

147 Notwithstanding the provisions of article five, chapter
148 three of this code, and in order to provide for the orderly
149 nomination and election of circuit court judges, the time
150 permitted for the filing of certificates of candidacy for
151 nomination to the additional circuit court judgeships
152 created and established by the provisions of subsection
153 (a) of this section, viz., the seventh, twelfth, thirteenth,
154 fourteenth, seventeenth, twenty-first, twenty-fifth and
155 twenty-ninth judicial circuits, is hereby extended to the
156 thirtieth day of March, solely for the year one thousand
157 nine hundred seventy-six. Such certificate shall be filed

158 with the secretary of state or the clerk of the circuit
159 court, as the case may be, not later than midnight,
160 eastern standard time, of that day, or, if mailed, shall
161 be postmarked before that hour.

162 (g) The terms of court of the circuit judges of the
163 counties aforesaid shall commence and be held as here-
164 inafter provided.

CHAPTER 38

(S. B. 104—By Mr. Ward)

[Passed February 9, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-dd, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to courts; and changing the terms of the thirtieth judicial circuit.

Be it enacted by the Legislature of West Virginia:

That section one-dd, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.

§51-2-1dd. Thirtieth circuit.

1 For the county of Mingo, on the third Monday in Janu-
2 ary, April and September: *Provided*, That in the year
3 one thousand nine hundred seventy-six, for the county
4 of Mingo, on the third Monday in February, April and
5 September.

CHAPTER 39

(H. B. 1232—By Mr. Lehr and Mr. Shiflet)

[Passed March 11, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-i, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of court in the ninth judicial circuit.

Be it enacted by the Legislature of West Virginia:

That section one-i, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.

§51-2-1i. Ninth circuit.

- 1 For the county of Mercer, on the second Monday in Feb-
- 2 ruary, June and October.

CHAPTER 40

(Com. Sub. for H. B. 1478—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of judges of the circuit courts.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.**§51-2-13. Salaries of judges of circuit courts.**

1 The salaries of the judges of the various circuit courts shall
2 be paid solely out of the state treasury. No county, county
3 commission, board of commissioners or other political subdivi-
4 sion shall supplement or add to such salaries.

5 The annual salary of all circuit judges shall be thirty-one
6 thousand five hundred dollars per year.

:

CHAPTER 41

(Com. Sub. for S. B. 220—By Mr. Galperin and Mr. Kusic)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty, relating to crimes against property; prohibiting the unauthorized transferral of recorded sounds; prohibiting the sale or possession with intent to sell unauthorized transferred recorded devices; providing criminal penalties; granting civil cause of action with compensatory damages; and providing definition.

Be it enacted by the Legislature of West Virginia:

That article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fifty, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.**§61-3-50. Unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; definition.**

1 No person shall knowingly and willfully transfer by

2 electronic or mechanical means or cause to be transferred
3 by electronic or mechanical means with intent to sell for
4 profit the recorded sounds contained on any phonograph
5 record, disc, tape, film or other device without the per-
6 mission of the owner of such recorded sounds' or his
7 authorized representative, or to knowingly, or with
8 reasonable grounds to know, sell or possess with intent to
9 sell any phonograph record, disc, tape, film or other device
10 containing such unauthorized transferred recorded
11 sounds.

12 Any unauthorized recorded sounds produced in viola-
13 tion of this section, and any equipment used for such
14 purpose, shall be subject to confiscation and destruction
15 by the appropriate law-enforcement agency.

16 Any phonograph record, disc, tape, film or other device
17 offered for sale or resale shall clearly and conspicuously
18 disclose the actual name and address of the manufacturer
19 thereof, and the name of the actual performer or group.

20 Any person violating any provision of this section shall
21 be guilty of a misdemeanor, and, upon conviction thereof,
22 shall be fined not more than one thousand dollars.

23 Any owner of such recorded sounds and any person
24 lawfully transferring such sounds by agreement with
25 such owner shall have a cause of action for the unau-
26 thorized transferral of such sounds and shall be entitled
27 to treble damages resulting therefrom.

28 For the purpose of this section, the term "owner" means
29 the person vested with the rights to and ownership of the
30 original fixation of sounds embodied in the master phono-
31 graph record, master disc, master tape, master film or
32 other device used for transferring sounds on phonograph
33 records, discs, tapes, films or other similar articles upon
34 which sound is recorded, and from which the transferred
35 recorded sounds are directly derived.

CHAPTER 42

(S. B. 205—By Mr. Palumbo and Mr. Rogerson)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal acts; obscene, anonymous, harassing, repeated and threatening telephone calls; penalties.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-16. Obscene, anonymous, harassing, repeated and threatening telephone calls; penalty.

- 1 (a) It shall be unlawful for any person with intent to
2 harass or abuse another by means of telephone to:
 - 3 (1) Make any comment, request, suggestion or pro-
4 posal which is obscene; or
 - 5 (2) Make a telephone call, whether or not conversa-
6 tion ensues, without disclosing his identity and with
7 intent to harass any person at the called number; or
 - 8 (3) Make or cause the telephone of another repeatedly
9 or continuously to ring, with intent to harass any person
10 at the called number; or
 - 11 (4) Make repeated telephone calls, during which con-
12 versation ensues, with intent to harass any person at the
13 called number; or
 - 14 (5) Threaten to commit a crime against any person or
15 property.
- 16 (b) It shall be unlawful for any person to knowingly
17 permit any telephone under his control to be used for
18 any purpose prohibited by this section.

19 (c) Any offense committed under this section may be
20 deemed to have occurred at the place at which the tele-
21 phone call was made, or the place at which the telephone
22 call was received.

23 (d) Any person who violates any provision of this
24 section shall be guilty of a misdemeanor, and, upon con-
25 viction thereof, shall be fined not more than five hundred
26 dollars, or imprisoned in the county jail not more than
27 six months, or both fined and imprisoned.

CHAPTER 43

(Com. Sub. for S. B. 154—By Miss Herndon, Mr. Darby and Mr. Neeley)

[Passed March 11, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections fifteen and fifteen-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections thirteen, twenty-eight and twenty-nine, article eight of said chapter sixty-one; to repeal section seven, article nine, chapter sixty-two of said code; and to amend said chapter sixty-one by adding thereto a new article, designated article eight-b, relating to sexual assault and sexual offenses; defining terms; lack of consent; various degrees of sexual assault; degrees of sexual abuse; sexual misconduct; public indecency; evidence and defenses; and providing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and fifteen-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections thirteen, twenty-eight and twenty-nine, article eight of said chapter sixty-one be repealed; that section seven, article nine, chapter sixty-two of said code be repealed; and that said chapter sixty-one be amended by adding thereto a new article, designated article eight-b, to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

- §61-8B-1. Definition of terms
- §61-8B-2. Lack of consent.
- §61-8B-3. Sexual assault in the first degree.
- §61-8B-4. Sexual assault in the second degree.
- §61-8B-5. Sexual assault in the third degree.
- §61-8B-6. Sexual abuse in the first degree.
- §61-8B-7. Sexual abuse in the second degree.
- §61-8B-8. Sexual abuse in the third degree.
- §61-8B-9. Sexual misconduct.
- §61-8B-10. Indecent exposure.
- §61-8B-11. Public indecency.
- §61-8B-12. Sexual offenses—Evidence.
- §61-8B-13. Sexual offenses—A defense.

§61-8B-1. Definition of terms.

1 In this article, unless a different meaning plainly is
2 required:

3 (1) “Forcible compulsion” means:

4 (a) Physical force that overcomes such earnest resis-
5 tance as might reasonably be expected under the cir-
6 cumstances; or

7 (b) Threat or intimidation, expressed or implied, plac-
8 ing a person in fear of immediate death or bodily injury
9 to himself or another person or in fear that he or another
10 person will be kidnapped.

11 For the purposes of this definition “resistance” includes
12 physical resistance or any clear communication of the
13 victim’s lack of consent.

14 (2) “Marriage,” for the purposes of this article in addi-
15 tion to its legal meaning, includes persons living together
16 as man and wife regardless of the legal status of their
17 relationship.

18 (3) “Mentally defective” means that a person suffers
19 from a mental disease or defect which renders him in-
20 capable of appraising the nature of his conduct.

21 (4) “Mentally incapacitated” means that a person is
22 rendered temporarily incapable of appraising or control-
23 ling his conduct as a result of the influence of a controlled

24 or intoxicating substance administered to him without
25 his consent or as a result of any other act committed
26 upon him without his consent.

27 (5) "Physically helpless" means that a person is un-
28 conscious or for any other reason is physically unable to
29 communicate unwillingness to an act.

30 (6) "Sexual contact" means any touching of the anus or
31 any part of the sex organs of another person, or the breasts
32 of a female eleven years old or older, where the victim is
33 not married to the actor and the touching is done for the
34 purpose of gratifying the sexual desire of either party.

35 (7) "Sexual intercourse" means any act between per-
36 sons not married to each other involving penetration,
37 however slight, of the female sex organ by the male
38 sex organ or involving contact between the sex organs
39 of one person and the mouth or anus of another person.

40 (8) "Bodily injury" means substantial physical pain,
41 illness or any impairment of physical condition.

42 (9) "Serious bodily injury" means bodily injury which
43 creates a substantial risk of death, which causes serious
44 and prolonged disfigurement, prolonged impairment of
45 health, or prolonged loss or impairment of the function of
46 any bodily organ.

47 (10) "He" includes any human being.

48 (11) "Deadly weapon" means any instrument, device,
49 or thing capable of inflicting death or serious bodily injury,
50 and designed or specially adapted for use as a weapon,
51 or possessed, carried or used as a weapon.

§61-8B-2. Lack of consent.

1 (a) Whether or not specifically stated, it is an element
2 of every offense defined in this article that the sexual act
3 was committed without consent of the victim.

4 (b) Lack of consent results from:

5 (1) Forcible compulsion; or

6 (2) Incapacity to consent; or

7 (3) If the offense charged is sexual abuse, any cir-
8 cumstances in addition to the forcible compulsion or
9 incapacity to consent in which the victim does not express-
10 ly or impliedly acquiesce in the actor's conduct.

11 (c) A person is deemed incapable of consent when
12 he is:

13 (1) Less than sixteen years old; or

14 (2) Mentally defective; or

15 (3) Mentally incapacitated; or

16 (4) Physically helpless.

§61-8B-3. Sexual assault in the first degree.

1 (a) A person is guilty of sexual assault in the first
2 degree when:

3 (1) He engages in sexual intercourse with another per-
4 son by forcible compulsion; and

5 (i) He inflicts serious bodily injury upon anyone; or

6 (ii) He employed a deadly weapon in commission of the
7 crime; or

8 (iii) The victim was not a voluntary social companion of
9 the actor on the occasion of the crime; or

10 (2) He engages in sexual intercourse with another
11 person who is incapable of consent because he is physically
12 helpless; or

13 (3) He, being fourteen years old or more, engages in
14 sexual intercourse with another person who is incapable
15 of consent because he is less than eleven years old.

16 (b) Any person who violates the provisions of this
17 section shall be guilty of a felony, and, upon conviction
18 thereof, shall be imprisoned not less than ten nor more
19 than twenty years, or fined not more than ten thousand
20 dollars and imprisoned in the penitentiary not less than
21 ten nor more than twenty years.

§61-8B-4. Sexual assault in the second degree.

1 (a) A person is guilty of sexual assault in the second
2 degree when:

3 (1) He engages in sexual intercourse with another
4 person by forcible compulsion; or

5 (2) By forcible compulsion, he causes penetration,
6 however slight, of the female sex organ or of the anus
7 of any person, by any inanimate object for the purpose
8 of gratifying the sexual desire of either party.

9 (b) Any person who violates the provisions of this
10 section shall be guilty of a felony, and, upon conviction
11 thereof, shall be imprisoned in the penitentiary not less
12 than five nor more than ten years, or fined not more than
13 ten thousand dollars and imprisoned in the penitentiary
14 not less than five nor more than ten years.

§61-8B-5. Sexual assault in the third degree.

1 (a) A person is guilty of sexual assault in the third
2 degree when:

3 (1) He engages in sexual intercourse with another per-
4 son who is incapable of consent because he is mentally
5 defective or mentally incapacitated; or

6 (2) Being sixteen years old or more, he engages in
7 sexual intercourse with another person who:

8 (i) Is incapable of consent because he is less than six-
9 teen years old; and

10 (ii) Is at least four years younger than the defendant.

11 (b) Any person who violates the provisions of this
12 section shall be guilty of a felony, and, upon conviction
13 thereof, shall be imprisoned in the penitentiary not less
14 than one year nor more than five years, or fined not
15 more than ten thousand dollars and imprisoned in the
16 penitentiary not less than one year nor more than five
17 years.

§61-8B-6. Sexual abuse in the first degree.

1 (a) A person is guilty of sexual abuse in the first de-
2 gree when:

3 (1) He subjects another person to sexual contact by
4 forcible compulsion; or

5 (2) He subjects another person to sexual contact who
6 is incapable of consent because he is physically helpless;
7 or

8 (3) He, being fourteen years old or more, subjects
9 another person to sexual contact who is incapable of con-
10 sent because he is less than eleven years old.

11 (b) Any person who violates the provisions of this
12 section shall be guilty of a felony, and, upon conviction
13 thereof, shall be imprisoned in the penitentiary not less
14 than one year nor more than five years, or fined not more
15 than ten thousand dollars and imprisoned in the peniten-
16 tiary not less than one year nor more than five years.

§61-8B-7. Sexual abuse in the second degree.

1 (a) A person is guilty of sexual abuse in the second
2 degree when he subjects another person to sexual contact
3 who is incapable of consent because he is mentally de-
4 fective or mentally incapacitated.

5 (b) Any person who violates the provisions of this
6 section shall be guilty of a misdemeanor, and, upon con-
7 viction thereof, shall be confined in the county jail not
8 more than twelve months, or fined not more than five
9 hundred dollars and confined in the county jail not more
10 than twelve months.

§61-8B-8. Sexual abuse in the third degree.

1 (a) A person is guilty of sexual abuse in the third
2 degree when he subjects another person to sexual contact
3 without the latter's consent, when such lack of consent
4 is due to the victim's incapacity to consent by reason
5 of being less than sixteen years old.

6 (b) In any prosecution under this section it is a de-
7 fense that:

8 (1) The defendant was less than sixteen years old; or

9 (2) The defendant was less than four years older than
10 the victim.

11 (c) Any person who violates the provisions of this
12 section shall be guilty of a misdemeanor, and, upon con-

13 viction thereof, shall be confined in the county jail not
14 more than ninety days, or fined not more than five hun-
15 dred dollars and confined in the county jail not more
16 than ninety days.

§61-8B-9. Sexual misconduct.

1 (a) A person is guilty of sexual misconduct when he
2 engages in sexual intercourse with another person with-
3 out the latter's consent or engages in sexual intercourse
4 with another person knowing that such other person
5 mistakenly supposes that he is a third person.

6 (b) Any person who violates the provisions of this
7 section shall be guilty of a misdemeanor, and, upon con-
8 viction thereof, shall be confined in the county jail not
9 more than twelve months, or fined not more than five
10 hundred dollars and confined in the county jail not more
11 than twelve months.

§61-8B-10. Indecent exposure.

1 (a) A person is guilty of indecent exposure when he
2 intentionally exposes his sex organs or anus under cir-
3 cumstances in which he knows his conduct is likely to
4 cause affront or alarm.

5 (b) Any person who violates the provisions of this
6 section shall be guilty of a misdemeanor, and, upon con-
7 viction thereof, shall be confined in the county jail not
8 more than ninety days, or fined not more than two hun-
9 dred fifty dollars and confined in the county jail not more
10 than ninety days.

§61-8B-11. Public indecency.

1 (a) A person is guilty of public indecency when, know-
2 ing his conduct is likely to be observed by others who
3 would be affronted or alarmed:

4 (1) He engages in any overt act of sexual gratification;
5 or

6 (2) He intentionally exposes the private or intimate
7 parts of his body or the body of another person.

8 (b) Any person who violates the provisions of this
9 section shall be guilty of a misdemeanor, and, upon con-
10 viction thereof, shall be fined not more than two hundred
11 fifty dollars.

§61-8B-12. Sexual offenses—Evidence.

1 (a) In any prosecution under this article in which the
2 victim's lack of consent is based solely on his incapacity to
3 consent because he was below a critical age, evidence of
4 specific instances of the victim's sexual conduct, opinion
5 evidence of the victim's sexual conduct and reputation
6 evidence of the victim's sexual conduct shall not be ad-
7 missible. In any other prosecution under this article,
8 evidence of specific instances of the victim's prior sexual
9 conduct with the defendant shall be admissible on the
10 issue of consent: *Provided*, That such evidence heard first
11 out of the presence of the jury is found by the judge to
12 be relevant.

13 (b) In any prosecution under this article evidence of
14 specific instances of the victim's sexual conduct with
15 persons other than the defendant, opinion evidence of the
16 victim's sexual conduct and reputation evidence of the
17 victim's sexual conduct shall not be admissible: *Provided*,
18 That such evidence shall be admissible solely for the
19 purpose of impeaching credibility, if the victim first
20 makes his previous sexual conduct an issue in the trial
21 by introducing evidence with respect thereto.

§61-8B-13. Sexual offenses—A defense.

1 (a) In any prosecution under this article in which the
2 victim's lack of consent is based solely on his incapacity
3 to consent because he was below a critical age, mentally
4 defective, mentally incapacitated or physically helpless,
5 it is an affirmative defense that the defendant at the time
6 he engaged in the conduct constituting the offense did
7 not know of the facts or conditions responsible for such
8 incapacity to consent, unless the defendant is reckless in
9 failing to know such facts or conditions.

10 (b) The affirmative defense provided in subsection (a)
11 of this section shall not be available in any prosecution

- 12 under subdivision (3), subsection (a), section three, and
13 under subdivision (3), subsection (a), section six of this
14 article.

CHAPTER 44

(H. B. 1174—By Mr. Scott)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the county dog and kennel fund and disposition of the funds therefrom; mileage for dog wardens.

Be it enacted by the Legislature of West Virginia:

That section ten, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 20. DOGS.

§19-20-10. Dog and kennel fund; disposition thereof.

1 All registration fees, head taxes, and fees and costs for
2 impounding and disposing of dogs, as provided in this article,
3 and collected thereunder, shall be paid into the county
4 treasury where they shall constitute and be set aside as a
5 special fund to be designated the "dog and kennel fund."

6 The county commission shall expend such fund, and issue
7 drafts payable therefrom, for the following purposes, and no
8 others: To pay the actual expenses incurred by the county
9 commission, the county assessor, and the sheriff in carrying
10 out the provisions of this article; to pay for the services of the
11 dog warden, his deputies, poundkeepers, and such other persons
12 as may be employed, if any, or may render services, in actually
13 carrying out the provisions of this article; to pay in its discre-
14 tion to the dog warden and his deputies mileage at the rate up to
15 fifteen cents per mile for the use of their privately owned vehi-
16 cles actually used in carrying out the provisions of this article;

17 to pay for the purchase, procurement, rental, construction, oper-
18 ation, maintenance and repair of any property, devices or facili-
19 ties reasonably necessary and required to carry out the provi-
20 sions of this article; to compensate any department of the state
21 government or any local board of health for any necessary ser-
22 vice rendered in connection with this article; to pay the costs of
23 any rabies control project or program authorized by law; to
24 compensate any persons who have suffered loss or damage on
25 account of the destruction, loss, or injury by dogs of any sheep,
26 lamb, goat, kid or poultry, when such claims have been proved
27 and allowed as provided in this article: *Provided, however,*
28 That such compensation authorized by the county commis-
29 sion shall not exceed an amount double the assessed value
30 of the destroyed or injured animals or poultry as shown
31 on the assessor's records, and in the event such animals are
32 not assessed, then compensation authorized by said court
33 shall not exceed the average assessed value of like animals
34 or poultry, or if no like animal or poultry is assessed, then
35 not to exceed the fair market value as determined by the
36 county commission.

37 In the event that the dog and kennel fund shall in any
38 year be insufficient to pay the several items set forth in this
39 section, then the county commission may be, and it is
40 hereby, authorized and empowered to pay such items out
41 of the county general fund. Any surplus of the dog and
42 kennel fund remaining unexpended in the county treasury,
43 and, in the opinion of the county commission, not needed
44 for the payment and satisfaction of claims and expenses as
45 herein provided, shall annually be paid into and credited to
46 the county school fund, but the funds thus used shall be in
47 an amount deemed proper and safe in the judgment and
48 discretion of the county commission.

CHAPTER 45

(Com. Sub. for S. B. 108—By Mr. Moreland)

[Passed March 10, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and six, article four, chapter forty-eight of the code of West Virginia,

one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article three, chapter forty-nine of said code, all relating to adoptions and persons to whom notice is required to be given or consent obtained; revocation of adoptions; and the relinquishment of children to child welfare agencies.

Be it enacted by the Legislature of West Virginia:

That sections one and six, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article three, chapter forty-nine of said code be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.

49. Child Welfare.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.

§48-4-1. Definition; who may adopt; petition; consent required; when notice required.

§48-4-6. Revocation of adoption.

§48-4-1. Definition; who may adopt; petition; consent required; when notice required.

1 (a) As used in this article, the term "determined
2 father" means any person who:

3 (1) Has been found guilty under the provisions of
4 article seven, chapter forty-eight of this code; or

5 (2) Has acknowledged his parental status by con-
6 tributing to the child's support, by living with the mother,
7 at the time of conception, or by admitting paternity by
8 any means.

9 (b) It shall be lawful for any person not married, or
10 any husband with his wife's consent, or any wife with her
11 husband's consent, or any husband and wife jointly, to
12 petition the circuit court or any other court of record hav-
13 ing jurisdiction of adoption proceedings of the county

14 wherein he, she or they may reside, or the judge of such
15 court in vacation, for permission to adopt any minor
16 child, and also to petition for a change of name of such
17 child. Consent to the adoption of a minor child shall
18 be required and obtained as follows:

19 (1) In the case of a child sought to be adopted, the
20 written consent, duly acknowledged, of the mother and
21 father (in the case of an illegitimate child, the mother
22 and the determined father) or the surviving parent of
23 such child sought to be adopted must be obtained and
24 presented with the petition: *Provided*, That, if the mother
25 and father (in the case of an illegitimate child, the
26 mother and the determined father) are living and one is
27 insane or has abandoned the child sought to be adopted,
28 only the consent of the other parent shall be required,
29 but the parent who is alleged to have abandoned the child
30 must be personally served, if the determined father re-
31 sides within the state, with a copy of the petition and
32 notice of the date, time and place of the hearing on said
33 petition at least twenty days prior to the date set for the
34 hearing; and if after due diligence personal service can-
35 not be obtained, or if the determined father resides outside
36 the state, then the copy of the petition and the notice of
37 the hearing may be sent by registered mail to the last
38 known address of such abandoning parent, such service
39 to be complete upon mailing. If both parents are either
40 dead, unknown, insane, have abandoned the child sought
41 to be adopted or have been deprived of the custody of the
42 person of such child by law, then and in such case, the
43 written consent, acknowledged as aforesaid, of the legal
44 guardian of such child or those having at the time the
45 legal custody of the child shall be obtained and so
46 presented, and if there be no legal guardian nor any
47 person having the legal custody of the child, then such
48 consent must be obtained from some discreet and suitable
49 person appointed by the court or judge thereof to act as
50 the next friend of such child in the adoption proceedings.

51 (2) In addition to the consent required in subdivision
52 (1) of this subsection, in any case where the child sought
53 to be adopted is twelve years of age or over, the written

54 consent of such child to such adoption, given in the
55 presence of the judge having jurisdiction thereof, must
56 also be obtained and presented before the entry of any
57 order of adoption, unless for extraordinary cause such is
58 waived by court order.

59 (c) No petition for an adoption shall be made or
60 presented until after the child sought to be adopted shall
61 have lived in the home of the adopting parent or parents
62 for a period of six months.

§48-4-6. Revocation of adoption.

1 (a) Except when the consent to such adoption has
2 been properly given by the department of welfare or a
3 licensed child welfare agency, as provided in section one,
4 article three, chapter forty-nine of this code, a parent or
5 guardian of a legitimate child, or the mother or determined
6 father or guardian of an illegitimate child who did not
7 consent to the adoption of such child, or any parent
8 including the determined father of an illegitimate child
9 entitled to notice as provided in subdivision (1), subsection
10 (b), section one of this article who was not served
11 with notice as provided in said subdivision (1), may, at
12 any time within one year after learning of or having reasonable
13 opportunity to learn of the adoption, apply by
14 petition to the court in which the adoption was granted,
15 praying that the adoption be vacated. The court to which
16 such application is made shall fix a date and time for a
17 hearing, shall cause notice thereof to be given to the person
18 or persons who were permitted to adopt such minor,
19 and, at the time so fixed, shall hear the petitioner and all
20 parties interested, and may vacate or affirm the adoption
21 in its discretion. Any party interested may appeal to the
22 supreme court of appeals from the decision of the court
23 in the matter, as in other civil cases.

24 (b) When any minor has been adopted, he may, within
25 one year after becoming of age, sign, seal and acknowledge
26 before proper authority, in the county in which the order
27 of adoption was made, a dissent from such adoption, and
28 file such instrument of dissent in the office of the clerk of
29 the court which granted said adoption and the clerk of the

30 county commission of such county, and such clerks shall
31 record and index the same. Upon the filing of such in-
32 strument of dissent the adoption shall be vacated.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

§49-3-1. Private and public child welfare agencies; definition.

1 (a) Whenever a child welfare agency licensed to place
2 children for adoption or the state department of welfare
3 shall have been given the permanent care, custody and
4 guardianship of any child and the rights of the parents
5 of such child shall have been terminated by order of a
6 court of competent jurisdiction or by a legally executed
7 relinquishment of parental rights, the child welfare
8 agency or department of welfare may consent to the
9 adoption of such child pursuant to the statutes regulating
10 adoption proceedings. The parents or the surviving
11 parent of a legitimate child or the mother and the deter-
12 mined father of an illegitimate child or the survivor may
13 relinquish the child to a child welfare agency licensed
14 to place children for adoption, or to the department of
15 welfare, by a written statement acknowledged as deeds
16 are required to be acknowledged by law: *Provided*, That
17 if either of the parents of such child is under eighteen
18 years of age, such relinquishment shall not be valid unless
19 and until the same shall have been approved in writing by
20 a judge of a court having jurisdiction of adoption proceed-
21 ings in the county in which such parent may reside or in
22 which such relinquishment is made. Notwithstanding any
23 other provision in this article, no minor parent or parents
24 shall be required to go before any court in order to
25 execute a consent to the adoption of his, her, or their
26 child by an individual or individuals.

27 (b) As used in this article, the term "determined
28 father" means any person who:

29 (1) Has been found guilty under the provisions of
30 article seven, chapter forty-eight of this code;

31 (2) Has acknowledged his parental status by con-

- 32 tributing to the child's support, by living with the mother
33 at the time of conception, or by admitting paternity by
34 any means.

CHAPTER 46

(Com. Sub. for H. B. 1147—By Mrs. Spears and Mrs. Pittenberger)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article six of said chapter, all relating to elections; candidates who shall be affected by recounts to be notified by personal or substitute service; and providing manner and time for return of service.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nine, article six of said chapter be amended and reenacted, all to read as follows:

Article

4. Voting Machines.

6. Conduct and Administration of Elections.

ARTICLE 4. VOTING MACHINES.

§3-4-26. Post-election custody and inspection of machines; canvass and recounts.

- 1 (1) The voting machines shall remain locked against voting
- 2 during the canvass of the returns of the election and for a
- 3 period of seven days after the canvass is finally concluded,
- 4 during which time any candidate or the chairman of any coun-
- 5 ty executive committee of any political party or their appointed
- 6 representatives shall be permitted to examine the voting
- 7 machines under the supervision of the county commission for
- 8 the purpose of determining the number of votes cast for any

9 candidate or for and against any question. After the expira-
10 tion of the seven-day period as herein provided, the voting
11 machines may be unlocked by the clerk of the county com-
12 mission and the registering counters reset at zero (000) unless
13 the board of canvassers or a court of competent jurisdiction
14 by appropriate court order directs otherwise.

15 (2) During the period when such machine is required to be
16 kept locked, the keys thereto shall remain in the possession of
17 the county commission. After such period, it shall be the duty
18 of the county commission to return such keys to the clerk of
19 the county commission.

20 (3) In canvassing the returns of the election, the board of
21 canvassers shall examine all of the voting machines used in
22 such election and shall determine the number of votes cast for
23 each candidate and for and against each question and by such
24 examination shall procure the correct returns and ascertain the
25 true results of the election. Any candidate or his party repre-
26 sentative may be present at such examination.

27 (4) If any candidate shall demand a recount of the votes
28 cast at an election, the voting machines shall not be reexamined
29 during such recount for the purpose of reascertaining the
30 total number of votes registered on the voting machines for
31 any candidate.

32 The provisions of section nine, article six of this chapter
33 shall apply where a recount is demanded.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-9. Canvass of returns; public declaration of results; recounts; notice of recount; preservation and subsequent destruction of ballots, records, etc.

1 The commissioners of the county commission shall be ex
2 officio a board of canvassers, and, as such, shall keep in a
3 well-bound book, marked "election record," a complete record
4 of all their proceedings in ascertaining and declaring the re-
5 sults of every election in their respective counties. They shall
6 convene as such canvassing board at the courthouse on the
7 fifth day (Sundays excepted) after every election held in their
8 county, or in any district thereof, and the officers in whose

9 custody the ballots, pollbooks, registration records, tally
10 sheets and certificates have been placed shall lay the same be-
11 fore them for examination. They may, if deemed necessary,
12 require the attendance of any of the commissioners, poll clerks
13 or other persons present at the election, to appear and testify
14 respecting the same, and make such other orders as shall seem
15 proper, to procure correct returns and ascertain the true results
16 of the election in their county; but in such case all the ques-
17 tions to the witnesses and all the answers thereto, and evi-
18 dence, shall be taken down in writing and filed and preserved.
19 All orders made shall be entered upon the record. They may
20 adjourn from time to time, but no longer than absolutely neces-
21 sary, and, when a majority of the commissioners are not pre-
22 sent, their meeting shall stand adjourned until the next day,
23 and so from day to day, until a quorum be present. The board
24 shall proceed to open each sealed package of ballots so laid
25 before them, and, without unfolding them, count the number
26 in each package and enter the same upon their record. The
27 ballots shall then be again sealed up carefully in a new enve-
28 lope, and each member of the board shall write his name across
29 the place where such envelope is sealed. After canvassing the
30 returns of the election, the board shall publicly declare the
31 results of the election; however, they shall not enter an order
32 certifying such election results for a period of forty-eight hours
33 after such declaration. Within such forty-eight-hour period a
34 candidate voted for at such election may demand the board
35 to open and examine any one or more of the sealed packages
36 of ballots, and recount the same; but in such case they shall
37 seal the same again, along with the envelope above named,
38 and the clerk of the county commission and each member of
39 the board shall write his name across the place or places where
40 it is sealed, and endorse in ink, on the outside: "Ballots of
41 the election held at precinct No. _____, in the district of
42 _____, and county of _____,
43 on the _____ day of _____." In computing
44 the aforesaid forty-eight hour period as hereinbefore used in
45 this section, Saturdays, Sundays and legal holidays shall be
46 excluded: *Provided*, That at the end of the forty-eight-hour
47 period, an order shall be entered certifying all election results
48 except for those offices in which a recount has been demanded.

49 Every candidate who demands such recount shall be required
50 to furnish bond in a reasonable amount with good sufficient
51 surety to guarantee payment of the costs and the expenses of
52 such recount in the event the result of the election be not
53 changed by such recount; but the amount of such bond shall
54 in no case exceed three hundred dollars.

55 In the event a recount has been demanded, the board shall
56 have an additional twenty-four hours after the end of said
57 forty-eight hour period, in which to send notice to all candi-
58 dates who filed for the office in which a recount has been de-
59 manded, of the date, time and place where the board will con-
60 vene to commence the recount. Said recount shall be set for no
61 sooner than three days after the serving of said notice. Service
62 of process shall occur in the following manner: Any sheriff of
63 the county in which the recount is to occur shall deliver a copy
64 thereof in writing to such candidate in person; or if such candi-
65 date be not found, by delivering such copy at the usual place
66 of abode of such candidate, and giving information of its pur-
67 port, to the spouse of such candidate or any other person found
68 there who is a member of his family and above the age of six-
69 teen years; or if neither the spouse of such candidate nor any
70 such other person be found there, and such candidate be not
71 found, by leaving such copy posted at the front door of such
72 place of abode. Any sheriff, thereto required, shall serve a
73 notice within his county and make return of the manner and
74 time of service; for a failure so to do, he shall forfeit twenty
75 dollars. Such return shall be evidence of the manner and time
76 of service.

77 When they have made their certificates and declared the re-
78 sults as hereinafter provided, they shall deposit the sealed
79 packages of ballots, absent voter ballots, registration records,
80 pollbooks, tally sheets and precinct certificates with the clerks
81 of the county commissions and circuit courts from whom they
82 were received, who shall carefully preserve the same for sixty
83 days, and if there be no contest pending as to any such elec-
84 tion, and their further preservation be not required by any
85 order of a court, such ballots, pollbooks, tally sheets and
86 certificates shall be destroyed by fire or otherwise, without
87 opening the sealed packages of ballots; and if there be such

88 contest pending, then they shall be so destroyed as soon as
89 the contest is ended: *Provided*, That the pollbooks shall be
90 preserved until such time as the clerk of the county commis-
91 sion has completed the duties imposed upon him by section
92 three, article two of this chapter. If the result of the election
93 be not changed by such recount, the costs and expenses there-
94 of shall be paid by the party at whose instance the same was
95 made.

CHAPTER 47

(Com. Sub. for H. B. 968—By Mrs. Spears and Mrs. Pittenberger)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five and six, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections five-a, five-b, five-c and five-d, all relating to elections; providing for records of receipts and expenditures for political purposes; requiring treasurers and financial agents to be designated in writing and where the written designations are to be filed; requiring detailed accounts and verified financial statements; requiring an additional preelection financial statement to be filed; changing the time for filing other preelection financial statements; requiring information that must be included in financial statements; requiring each contribution totaling more than fifty dollars to be by check or money order; providing full disclosure of all election campaign expenditures and liabilities; prohibiting contributions from funds of another unless full disclosure is made; providing where financial statements are to be filed; defining the term "contribution"; providing penalties and civil liability for certain violations; extending statute of limitations to five years; and requiring preservation of financial statements for a period of five years.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five and six, article eight, chapter three

of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections five-a, five-b, five-c and five-d, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2. Accounts for receipts and expenditures in elections.

§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-5a. Information required in financial statement.

§3-8-5b. Where financial statement shall be filed.

§3-8-5c. "Contribution" defined.

§3-8-5d. Offenses and penalties.

§3-8-6. Financial statement forms; filing; disposition.

§3-8-2. Accounts for receipts and expenditures in elections.

1 Except candidates for party committeemen and committee-
2 women, in primary and other elections, all candidates for
3 nomination or election and all persons or organizations of any
4 kind advocating or opposing a nomination, election or defeat
5 of any candidate, or the passage or defeat of any issue, thing
6 or item to be voted upon, shall keep records of receipts and
7 expenditures which are made for political purposes. All such
8 receipts and expenditures shall be subject to regulation by the
9 provisions of this article. Verified financial statements of such
10 records and expenditures shall be made and filed as public
11 records by all candidates and by their financial agents, repre-
12 sentatives, or any person acting for and on behalf of any
13 candidate, or the passage or defeat of any issue, thing or item
14 to be voted upon, and by the treasurers of all political party
15 committees.

§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

1 No person shall act as the treasurer of any political party
2 committee, or as financial agent for any candidate for nomina-
3 tion or election to any office to be filled by the voters of the
4 entire state, delegates to a national convention, candidates for
5 president of the United States, or candidates for nomination
6 or election for any office, encompassing an election district
7 larger than a county, or any person or organization advocating

8 or opposing the nomination, election or defeat of any candi-
9 date, or the passage or defeat of any issue, thing or item to be
10 voted upon, encompassing an election district larger than a
11 county, unless a written statement designating him as such
12 treasurer or financial agent shall be filed with the secretary
13 of state, at least sixty days before the election at which he is
14 to act. No person shall act as treasurer of any such committee
15 or as financial agent for any candidate to be nominated or
16 elected by the voters of a county or a district therein, or as
17 the treasurer or financial agent for a candidate for the nomi-
18 nation or election to any other office, or for the passage or
19 defeat of any issue, thing or item to be voted upon not here-
20 in mentioned, unless a written statement designating him as
21 such treasurer or financial agent shall be filed with the clerk of
22 the county commission at least sixty days before the election at
23 which he is to act.

24 As used in this article:

25 The term "person" shall include an individual, partnership,
26 committee, association, corporation, and any other organiza-
27 tion or group of persons; and

28 The term "financial agent" shall include any person acting
29 for and by himself, or any two or more natural persons acting
30 together or cooperating in a financial way to aid or take part
31 in the nomination or election of any candidate for public of-
32 fice, or to aid or promote the success or defeat of any political
33 party or principle at any election, or any proposition sub-
34 mitted to a vote at a public election.

§3-8-5. Detailed accounts and verified financial statements required.

1 Every candidate, financial agent, person and association
2 of persons, organization of any kind, including the treasurer
3 or equivalent officer of such association or organization,
4 advocating or opposing the nomination, election or defeat
5 of any candidate, or the passage or defeat of any issue, thing
6 or item to be voted upon, and the treasurer of every
7 political party committee shall keep detailed accounts of
8 every sum of money or other thing of value received by
9 him, and of all expenditures and disbursements made, liabili-
10 ties incurred, by such candidate, financial agent, person,

11 association or organization or committee, for political pur-
12 poses, or by any of the officers or members of such com-
13 mittee, or any person acting under its authority or on its
14 behalf.

15 Each person who files a certificate of candidacy for
16 nomination or election in this state as provided for in
17 article five of this chapter and every financial agent, per-
18 son, the treasurer or equivalent officer of any association
19 or organization of any kind supporting or opposing the
20 candidacy of any such candidate, or any person or organiza-
21 tion advocating or opposing the nomination, election, or
22 defeat of any candidate, or the passage or defeat of any
23 issue, thing or item to be voted upon, shall, within fifteen
24 days following the first Saturday of February next preceding
25 the primary election day, file a detailed itemized statement,
26 subscribed and sworn to before an officer authorized to
27 administer oaths, setting forth all contributions and expendi-
28 tures concerning the candidacy of that person or any person
29 or organization advocating or opposing the nomination, elec-
30 tion or defeat of any candidate, or the passage or defeat
31 of any issue, thing or item to be voted upon. Such statement
32 shall include all contributions received or expenditures made
33 which have taken place by the date of such report, subsequent
34 to any previous report filed within the previous five years
35 under this section or under the former provisions of this
36 section, or if no report was filed, all contributions received
37 or expenditures made within the preceding five years. The
38 specific information required to be included in such statement
39 is provided for in section five-a of this article.

40 Not less than five nor more than ten days before each
41 primary or other election, and again within thirty days after
42 each primary or other election, every candidate for nomina-
43 tion or election, and every financial agent, person, the
44 treasurer or equivalent officer of any association or organiza-
45 tion of any kind advocating or opposing the passage or defeat
46 of any issue, thing or item to be voted upon or pertaining
47 to the holding or conducting of any election, and the treasurer
48 of every political party committee shall file with the officers
49 hereinafter prescribed a detailed itemized financial statement

50 subscribed and sworn to before an officer authorized to
51 administer oaths, setting forth all financial transactions which
52 have taken place by the date of such report in connection
53 with such primary or other election as provided for in
54 section five-a of this article.

§3-8-5a. Information required in financial statement.

1 Each financial statement as required by this article shall
2 show the following information:

3 (a) The first name, middle initial, if any, and last name,
4 residence and mailing address and telephone number of each
5 candidate, financial agent, treasurer or person, and the full
6 name, address and telephone number of each association, or-
7 ganization or committee filing a financial statement.

8 (b) The balance of cash and any other sum of money on
9 hand at the beginning and the end of the period covered by
10 the financial statement.

11 (c) The first name, middle initial, if any, and the last
12 name in the case of an individual, and the full name of each
13 firm, association or committee, and the amount of such
14 contribution of such individual, firm, association or com-
15 mittee, and, if the aggregate of the sum or sums contri-
16 buted by any one such individual, firm, association or com-
17 mittee exceeds two hundred fifty dollars there shall also be
18 reported the residence and mailing address and, in the case
19 of an individual, the major business affiliation and occupa-
20 tion. A contribution totaling more than fifty dollars by any
21 one contributor is prohibited unless it is by money order
22 or by check, and a violation of this provision is sub-
23 ject to section five-d of this article. As used herein, the
24 term "check" shall have the meaning ascribed to that term
25 in section one hundred four, article three, chapter forty-
26 six of this code.

27 (d) The total amount of contributions received during
28 the period covered by the financial statement.

29 (e) The first name, middle initial, if any, and the last
30 name, residence and mailing address in the case of an individ-
31 ual, or the full name and mailing address of each firm, associa-

tion or committee to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required herein, such lump sum expenditures shall be accounted for in the same manner as provided herein.

(f) The total expenditure for the nomination, election or defeat of a candidate or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, in whose behalf an expenditure was made or a contribution was given for the primary or other election.

(g) The total amount of expenditures made during the period covered by the financial statement.

(h) Any unexpended balance at the time of making the financial statements herein provided for, shall be properly accounted for in that financial statement and shall appear as a balance in the next following financial statement.

(i) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund raising event held during the period covered by the financial statement:

(1) The type of event, date held, and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (c) of this section.

(3) The total of all moneys received at the fund raising event.

(4) The expenditures incident to the fund raising event.

(5) The net receipts of the fund raising event.

For the purpose of this section the term "fund raising event"

67 means an event such as a dinner, reception, testimonial, cock-
68 tail party, auction or similar affair through which contributions
69 are solicited or received by such means as purchase of a
70 ticket, payment of an attendance fee or through purchase of
71 goods or services.

72 (j) Any contribution or expenditure made by or on be-
73 half of a candidate for public office, to any other candidate,
74 or committee for a candidate for any public office in the same
75 election shall comply with the provisions of this article.

76 (k) No person, firm, association or committee shall make
77 any contribution except from his own funds, unless such
78 person, firm, association or committee discloses in writing
79 to the person required to report under this section the first
80 name, middle initial, if any, and the last name in the case
81 of an individual, or the full name in the case of a firm, associa-
82 tion or committee; residence and mailing address; the major
83 business affiliation and occupation of the person, firm, associa-
84 tion or committee which furnished the funds to such contri-
85 butor. All such disclosures shall be included in the statement
86 required by this section.

§3-8-5b. Where financial statements shall be filed.

1 The sworn financial statements provided for in sections
2 five and five-a shall be filed with the secretary of state by
3 candidates for state and other offices to be nominated or elected
4 by the voters of a political division greater than a county,
5 and with the clerk of the county commission by all other
6 candidates for offices to be nominated or elected.

§3-8-5c. "Contribution" defined.

1 The term "contribution," as used in this article, shall mean
2 a gift subscription, assessment, payment for services, dues, ad-
3 vance, donation, pledge, contract, agreement, forbearance or
4 promise of money or other tangible thing of value, whether or
5 not conditional or legally enforceable, or a transfer of money
6 or other tangible thing of value to a person, made for the
7 purpose of influencing the nomination, election or defeat of a
8 candidate, or for the passage or defeat of any issue, thing or
9 item to be voted upon. An offer or tender of a contribution is
10 not a contribution if expressly and unconditionally rejected

- 11 or returned. A contribution does not include volunteer per-
12 sonal services provided without compensation.

§3-8-5d. Offenses and penalties.

1 Any person who makes or receives a monetary contribution
2 of fifty dollars or more in value, other than by check or money
3 order, shall be guilty of a misdemeanor, and, upon conviction,
4 shall be fined a sum equal to three times the amount or value
5 of the contribution.

6 Notwithstanding the provision of section twenty-four, article
7 nine of this chapter, a criminal prosecution or civil action for
8 violation of this article shall be commenced within five years
9 after the violation occurred.

10 No person required to report under this article shall be
11 found in violation of this article if any person, firm, association
12 or committee making a contribution has provided false infor-
13 mation to such person: *Provided*, That any person, firm, asso-
14 ciation or committee who provides false information to a
15 person required to report under this article shall be guilty of
16 a misdemeanor, as provided for in section twenty-three, article
17 nine of this chapter.

§3-8-6. Financial statement forms; filing; disposition.

1 Blank forms for all financial statements required under
2 this article shall be prepared by the secretary of state, and
3 copies thereof, together with a copy of this article, shall
4 be furnished through the county clerk or otherwise, as the
5 secretary of state may deem expedient, to all treasurers
6 of political committees, to all political financial agents, and
7 to all candidates for nomination or election to any office,
8 upon the filing of a petition or announcement for nomination,
9 and to all other persons required by law to file such state-
10 ments who shall apply therefor. All statements filed in ac-
11 cordance with the provisions of this article shall be received,
12 endorsed and filed by the secretary of state and county clerks,
13 and shall be preserved for five years, after which time they
14 may be destroyed, if not required to be further preserved
15 by the order of any court.

CHAPTER 48

(H. B. 1590—By Mr. Burke)

[Passed March 13, 1976; in effect from passage.

Disapproved by the Governor, and repassed notwithstanding his objections.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five, relating to the granting of a cost-of-living, across-the-board salary increase for state employees; providing a short title; declaring legislative findings and policy; providing definitions; effective date; specifying that other increases are not prohibited; requiring executive heads of state spending units to file sworn statement of compliance; requiring attorney general to prepare and distribute forms for such statements; providing for written complaint to state auditor; requiring state auditor to decide questions as to eligibility to receive such salary increase; requiring state auditor to promulgate rules and regulations and to make reports to joint committee on government and finance; providing penalties for violations, including criminal penalty; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five, to read as follows:

CHAPTER 5.

GENERAL POWERS AND DUTIES OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE; BOARD OF PUBLIC WORKS; SALARY INCREASE FOR STATE EMPLOYEES; STATE BUILDING COMMISSION; SOCIAL SECURITY AGENCY; PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT; DEPARTMENT OF COMMERCE; WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT; HUMAN RIGHTS COMMISSION; WEST VIRGINIA ANTIQUITIES COM-

**MISSION; PUBLIC EMPLOYEES' AND TEACHERS'
RECIPROCAL SERVICE CREDIT ACT; WHITE
CANE LAW; WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT; WEST VIRGINIA COMMISSION
ON ENERGY, ECONOMY AND ENVIRONMENT.**

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Short title.

§5-5-2. Declaration of legislative findings and policy.

§5-5-3. Definitions.

§5-5-4. Granting of cost-of-living, across-the-board, salary increases; amount of increase; effective date.

§5-5-5. Sworn statement by department heads; complaint by eligible employee.

§5-5-6. Duties of state auditor; rules and regulations as to eligibility.

§5-5-7. Penalties for violations.

§5-5-8. Severability.

§5-5-1. Short title.

- 1 This article shall be known as the "State Employees Cost-
- 2 of-Living Salary Increase Act."

§5-5-2. Declaration of legislative findings and policy.

- 1 The Legislature hereby finds and declares:

- 2 (a) That due to the long continuing effects of inflation,
- 3 the salaries of state employees have been seriously eroded
- 4 to the detriment of such employees, their families, their
- 5 morale and ultimately to the detriment of the rendition of
- 6 good service to the citizens of this state by vital governmental
- 7 agencies of the state;

- 8 (b) That the granting of salary increases to certain state
- 9 employees on a merit basis is sound practice and conducive to
- 10 the encouragement of state employees in upgrading their skills
- 11 and performing their duties well; that while such practice should
- 12 continue, it is nevertheless not an adequate basis on which the
- 13 state can or should attempt to respond to the problem of the
- 14 erosion of state employees' salaries, because the greatest num-
- 15 ber of state employees are not covered by the merit, civil
- 16 service system of this state;

- 17 (c) That the state clearly has a duty and it is its policy
- 18 to respond to the fundamental needs of its employees and ought
- 19 to do so through the granting of a cost-of-living, across-the-

20 board, salary increase to eligible state employees.

21 The provisions of this article are to be liberally construed
22 to accomplish this manifest purpose.

§5-5-3. Definitions.

1 As used in this article:

2 (1) "Eligible employee" shall include any regular full-time
3 employee of the state or any spending unit thereof who is
4 eligible for membership in any state retirement system of the
5 state of West Virginia or other retirement plan authorized by
6 the state: *Provided*, That an eligible employee shall also meet
7 the requirement set forth in section four of this article relative
8 to previous period of employment: *Provided, however*, That
9 the mandatory salary increase required by this article shall not
10 apply to employees of the Legislature and the judiciary, or to
11 any employee of the state whose compensation is fixed by
12 statute or by statutory schedule, nor shall this article be con-
13 strued to mandate an increase in the salary of any elected
14 or appointed officer of the state.

15 (2) "Spending unit" shall include any state office, depart-
16 ment, agency, board, commission, institution, bureau or other
17 designated body authorized to hire employees.

**§5-5-4. Granting of cost-of-living, across-the-board, salary in-
creases; amount of increase; effective date.**

1 Effective for the fiscal year beginning the first day of July,
2 one thousand nine hundred seventy-six, every eligible employee
3 who was an employee of the state on the first day of January,
4 one thousand nine hundred seventy-six, and who has been
5 continuously employed thereafter, shall receive a cost-of-living
6 increase of one thousand dollars in the annual rate of com-
7 pensation which he was receiving as of the thirtieth day of
8 June, one thousand nine hundred seventy-six, such increase to
9 be prorated over the employee's normal pay period. This
10 article shall not be construed to prohibit other pay increases
11 based on merit, seniority, promotion or other reason, if funds
12 are available for such other pay increases: *Provided*, That the
13 executive head of each spending unit shall first grant the herein
14 mandated increase in rate of compensation to all eligible em-

15 ployees prior to the consideration of any increases based on
16 merit, seniority, promotion or other reason.

17 The executive head of every spending unit shall cause the
18 rate of compensation for each eligible employee to be increased,
19 effective as of the earliest applicable pay period in such fiscal
20 year, by at least the amount required by this section. Such
21 increases shall be reflected in the expenditure schedule sub-
22 mitted to the commissioner of finance and administration by
23 each such spending unit for such fiscal year.

§5-5-5. Sworn statement by department heads; complaint by eligible employee.

1 On or before the thirty-first day of August, one thousand
2 nine hundred seventy-six, every executive head of a spending
3 unit shall file in duplicate with the state auditor and legislative
4 auditor a sworn statement, on a form to be prescribed by the
5 attorney general, certifying that the expenditure schedule sub-
6 mitted by such executive head to the commissioner of finance
7 and administration provides for the increases mandated by
8 this article, and that the rate of compensation for each eligible
9 employee has in fact been increased by at least such amount.
10 The attorney general shall prepare and distribute such form
11 to the affected spending units on or before the first day of July,
12 one thousand nine hundred seventy-six.

13 Any eligible employee who has not received the herein
14 mandated increase in his rate of compensation after his first
15 pay period has elapsed shall make written complaint of such
16 fact to the state auditor who shall transmit a copy thereof to the
17 joint committee on government and finance of the Legislature.

§5-5-6. Duties of state auditor; rules and regulations as to eligibility.

1 In any case of doubt as to who is an eligible employee within
2 the meaning of this article, the state auditor shall resolve and
3 decide the question. For such purpose, he is hereby authorized
4 and it shall be his duty to promulgate and enforce all rules and
5 regulations necessary for determining the eligibility of em-
6 ployees. Such rules and regulations may provide for a hearing
7 on the question. The state auditor is further empowered to
8 obtain from any state officer or employee any and all informa-
9 tion which he shall deem necessary for making such deter-

10 minations. Rules and regulations promulgated hereunder shall
11 take effect immediately, notwithstanding any provisions of this
12 code to the contrary.

13 In any case where the state auditor finds that an eligible
14 employee has failed to receive the increase mandated by this
15 article, he shall make written report of the particulars of the
16 case to the joint committee on government and finance.

§5-5-7. Penalties for violations.

1 Any executive head of a spending unit other than a constitu-
2 tional officer, who shall fail or refuse to file a sworn statement
3 as required by section five of this article, shall by operation
4 of law have his pay suspended until such statement is filed.

5 In addition, any person, including a constitutional officer,
6 who shall willfully fail or refuse to perform the duties and
7 obligations placed upon him by the provisions of this article,
8 or who shall willfully hinder, delay or prevent the carrying
9 out of the purposes as set forth in this article and the receipt
10 of the salary increase by eligible employees hereunder, shall be
11 guilty of a misdemeanor, and shall be fined not less than one
12 thousand dollars nor more than five thousand dollars and
13 shall forfeit the office, position or employment he holds at the
14 time of such offense. The foregoing penalties shall not be
15 deemed exclusive but shall be in addition to other penalties and
16 remedies provided by law.

§5-5-8. Severability.

1 If any provision or application of this article is held invalid,
2 the invalidity shall not affect other provisions or applications
3 of the article which can be given effect without the invalid
4 provision or application, and to this end the provisions of this
5 article are severable.

CHAPTER 49

(S. B. 409—By Mr. Rogerson)

[Passed March 12, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter
five-a of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to the department of finance and administration and the minimum and maximum annual salary of the director of the purchasing division of said department.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-2. Department of finance and administration and office of commissioner continued; commissioner; divisions; directors.

1 The department of finance and administration and the
2 office of commissioner of finance and administration are
3 hereby continued in the executive branch of state gov-
4 ernment. The commissioner shall be the chief executive
5 officer of the department and director of the budget and
6 shall be appointed by the governor, by and with the ad-
7 vice and consent of the Senate, for a term not exceeding
8 the term of the governor. The commissioner shall serve
9 at the will and pleasure of the governor. The annual
10 compensation of the commissioner shall be as specified in
11 section two-a, article seven, chapter six of this code.
12 There shall be in the department of finance and adminis-
13 tration a budget division, a purchasing division and a gen-
14 eral services division. Each division shall be headed by a
15 director who shall be appointed by the commissioner. The
16 office of director of the purchasing division is hereby
17 abolished, and a new office of director of the purchasing
18 division is hereby created. No person shall be appointed
19 director of the purchasing division unless such person is
20 at the time of appointment a graduate of an accredited
21 college or university and shall have spent a minimum
22 of ten of the fifteen years immediately preceding his
23 appointment employed in an executive capacity in
24 purchasing for any unit of government or for any busi-
25 ness, commercial or industrial enterprise. The director

26 of the purchasing division shall receive an annual salary
27 of not less than eighteen thousand dollars nor more than
28 twenty-three thousand dollars. Any person appointed
29 as director of the division shall after such appointment
30 be subject to the provisions of article six, chapter twenty-
31 nine of this code.

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CHAPTER 50

(Com. Sub. for H. B. 1069—By Mr. Bird and Mr. Albright)

[Passed March 8, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-four, relating to preference to resident vendors doing business with the state.

Be it enacted by the Legislature of West Virginia:

That article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section forty-four, to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-44. Preference for resident vendors.

1 Other provisions of this article notwithstanding, in any
2 instance that a purchase of commodities or printing by the
3 director or by a state department is required under the
4 provisions of this article to be made upon competitive bids,
5 such purchase shall be made from a vendor resident in West
6 Virginia, if such bid does not exceed the lowest qualified
7 bid from a nonresident vendor by more than two percent of
8 the latter bid, and if such resident vendor has made written
9 claim for such preference at the time the bid was submitted.

10 A vendor shall be deemed to be a resident of this state
11 if such vendor be an individual, partnership, association or

12 corporation that maintains an active bona fide place of business
13 within the state and maintains therein a representative in-
14 ventory of the commodities on which the bid is submitted,
15 and, in the case of a corporation, is duly qualified to do
16 business and is in good standing under the laws of the state.

CHAPTER 51

(S. B. 146—By Mr. Sharpe, Mr. Davis and Mr. Hinkle)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of a state fire commission; prescribing a method of appointing members; providing for the election of a chairman and vice chairman; requiring the commission to meet at least six times a year; quorum required; establishing the duties of the commission to promulgate regulations and adopt a state fire code; creating the office of state fire administrator and providing for his appointment, term of office, salary, qualifications, responsibilities and removal; providing for public hearing; annual reports; removing fire marshal's office from the office of the insurance commissioner; establishing the state fire marshal's office under the state fire commission; changing the appointment, term of office, qualifications, responsibilities and removal of the state fire marshal; providing for the powers and duties of the fire marshal; providing that employees are to be members of the state civil service system; establishing a state master plan for fire service; removing requirement that tax on insurance companies be used for maintenance of state fire marshal's office; prohibiting construction of a fire hazard; authorizing fire marshal to order removal of fire hazard and providing that removal is to be done by the fire marshal at expense of owner upon failure to comply with fire marshal's order; providing other remedies to abate fire hazard; providing for the

transfer of certain state employees and the perpetuation of rules and regulations; providing penalties and procedures for appeal; and severability.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

- §29-3-1. Short title.
- §29-3-2. Legislative findings and declaration of policy.
- §29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.
- §29-3-4. Chairman; vice chairman; meetings; quorum.
- §29-3-5. Promulgation of regulations and state fire code.
- §29-3-6. Public hearings and notice.
- §29-3-7. Commission's powers in conduct of public hearing.
- §29-3-8. Office of state fire administrator created; appointment; term of office; removal; compensation; employees; equipment.
- §29-3-9. Powers, duties and authority of state fire commission and state fire administrator.
- §29-3-10. State fire marshal's office transferred to state fire commission; powers and duties of state insurance commissioner with respect to fire marshal terminated; operation of commission prior to adoption of code.
- §29-3-11. Appointment of state fire marshal; term of office; removal; salary; qualifications; responsibilities; employees; equipment.
- §29-3-12. Powers and duties of state fire marshal.
- §29-3-13. Annual reports.
- §29-3-14. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply and right to appeal.
- §29-3-15. Service of repair or demolition order.
- §29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.
- §29-3-17. Additional remedies to abate, etc., fire hazards.
- §29-3-18. Appellate procedure generally.
- §29-3-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.
- §29-3-20. Allowance for reporting fires; when allowance not granted.
- §29-3-21. False alarm of fire; penalties.
- §29-3-22. Tax on insurance companies.
- §29-3-23. "Fireworks" defined; labels required.
- §29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.
- §29-3-25. Interstate sale and shipment; permitted uses.

§29-3-26. Seizures by fire marshal; enforcement of law.

§29-3-27. Penalties.

§29-3-28. Transfer of certain state employees; perpetuation of rules, regulations and orders.

§29-3-29. Construction.

§29-3-30. Severability.

§29-3-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Fire Prevention and Control Act."

§29-3-2. Legislative findings and declaration of policy.

- 1 The Legislature hereby finds and declares that:

- 2 (a) A significant part of the population of this state
- 3 needs improved fire prevention and control;

- 4 (b) The establishment and maintenance of a coor-
- 5 dination program for fire prevention and control for
- 6 the entire state is necessary to promulgate the safety
- 7 and well-being of the citizens and residents of this
- 8 state;

- 9 (c) Adequate fire prevention and control are not
- 10 likely to become a reality unless certain administrative
- 11 functions and procedures are enacted by law; and

- 12 (d) Fire prevention and control are a public purpose
- 13 and a responsibility of government for which public
- 14 money may be spent.

§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

- 1 (a) There is hereby created a state fire commission,
- 2 which shall consist of eleven members, qualified by
- 3 experience and training to deal with the matters which
- 4 are the responsibilities of the commission. The officers
- 5 of the West Virginia fire chiefs association, the West
- 6 Virginia firemen's association, the West Virginia profes-
- 7 sional fire fighters association, the West Virginia manu-
- 8 facturers association, the West Virginia mutual insurance
- 9 association and the West Virginia association of indepen-
- 10 dent insurors shall submit a list of names of persons rec-

11 ommended by each of these associations to the governor for
12 consideration in appointing the state fire commission. The
13 West Virginia professional fire fighters association shall
14 recommend the names of six persons from full-time paid
15 fire departments. The West Virginia fire chiefs association
16 and the West Virginia firemen's association shall each rec-
17 ommend the names of three persons from volunteer fire
18 departments. The West Virginia manufacturers associa-
19 tion shall recommend the names of three persons to rep-
20 resent business and industry and the West Virginia asso-
21 ciation of independent insurors shall recommend the
22 name of one person, and the West Virginia mutual insur-
23 ance association shall recommend the name of one person,
24 to represent the fire insurance industry. Appointments to
25 the commission shall be made by the governor, by and
26 with the advice and consent of the Senate, from the lists
27 of qualified persons recommended by the organizations.
28 Four members shall be appointed to represent full-time
29 paid fire departments and four members shall be ap-
30 pointed to represent volunteer fire departments. Two
31 members shall be appointed to represent business and in-
32 dustry and one member shall be appointed to represent
33 the fire insurance industry. The term of office of the
34 members shall be staggered five-year terms. The terms
35 of members first appointed shall expire as designated by
36 the governor at the time of appointment, two at the end
37 of one year, two at the end of two years, three at the end
38 of three years, two at the end of four years and two at
39 the end of five years. Vacancies shall be filled in the
40 same manner as the original appointment but only for the
41 remainder of a term. Any member is subject to removal
42 by the governor at any time for neglect of his duties or
43 other conduct unbecoming his office. The governor shall
44 make the appointments within ninety days after this sec-
45 tion takes effect.

46 (b) The members of the state fire commission shall
47 serve without compensation but shall be reimbursed for
48 their reasonable and necessary expenses actually in-
49 curred in the performance of their duties.

§29-3-4. Chairman; vice chairman; meetings; quorum.

1 (a) The state fire commission shall select a chairman
2 and vice chairman from among its members and shall
3 hold regular meetings at least once every two months
4 and special meetings when called by its chairman. In the
5 absence of the chairman, the vice chairman shall exercise
6 the powers and duties of the chairman.

7 (b) No business shall be transacted by the state fire
8 commission in the absence of a quorum which shall be
9 six members, one of whom must be the chairman or vice
10 chairman.

§29-3-5. Promulgation of regulations and state fire code.

1 (a) The state fire commission shall have the power to
2 promulgate, amend and repeal regulations for the safe-
3 guarding of life and property from the hazards of fire
4 and explosion pursuant to the provisions of chapter
5 twenty-nine-a of this code. Such regulations, amend-
6 ments or repeals thereof shall be in accordance with stan-
7 dard safe practice as embodied in widely recognized
8 standards of good practice for fire prevention and fire
9 protection and shall have the force and effect of law in
10 the several counties, municipalities and political sub-
11 divisions of the state.

12 (b) Pursuant to the provisions of chapter twenty-
13 nine-a of this code, the state fire commission, by the first
14 day of January, one thousand nine hundred seventy-seven,
15 shall promulgate comprehensive regulations for the safe-
16 guarding of life and property from the hazards of fire and
17 explosion to be known as the state fire code. Regulations
18 embodied in the state fire code shall be in accordance
19 with standard safe practice as embodied in widely recog-
20 nized standards of good practice for fire prevention and
21 fire protection and shall have the force and effect of law
22 in the several counties, municipalities and political sub-
23 divisions of the state.

24 (c) In interpretation and application, the state fire
25 code shall be held to be the minimum requirements for
26 the safeguarding of life and property from the hazards

27 of fire and explosion. Whenever any other state law,
28 county or municipal ordinance or regulation of any
29 agency thereof is more stringent or imposes a higher
30 standard than is required by the state fire code, the pro-
31 visions of such state law, county or municipal ordinance
32 or regulation of any agency thereof shall govern, provided
33 they are not inconsistent with the laws of West Virginia
34 and are not contrary to recognized standards and good
35 engineering practices. In any question, the decision of
36 the state fire commission determines the relative priority
37 of any such state law, county or municipal ordinance or
38 regulation of any agency thereof and determines com-
39 pliance with state fire regulations by officials of the state,
40 counties, municipalities and political subdivisions of the
41 state.

42 (d) A copy of the state fire code and any amendments
43 thereto, upon promulgation by the state fire commission,
44 shall be filed with the county clerk and shall be made
45 available for public information in each county courthouse
46 in the state.

§29-3-6. Public hearings and notice.

1 (a) Prior to the promulgation of a state fire code as
2 provided in section five of this article, the state fire com-
3 mission shall hold at least one public hearing on the
4 proposed regulations contained therein, notice of which
5 shall be the same as the notice for a hearing as provided
6 in the administrative procedure act, chapter twenty-
7 nine-a of this code.

8 (b) After the adoption of a state fire code, prior to
9 the promulgation of any additional regulation, amend-
10 ment to or repeal of a current regulation, the state fire
11 commission shall hold at least one hearing on each new
12 regulation, each amendment to and each repeal of a
13 current regulation to be separately submitted, notice of
14 which shall be the same as the notice for a hearing as
15 provided in the administrative procedure act, chapter
16 twenty-nine-a of this code.

§29-3-7. Commission's powers in conduct of public hearing.

1 For the purposes of any public hearing under this

2 article, the state fire commission is empowered and au-
3 thorized to issue subpoenas and subpoenas duces tecum, to
4 take testimony and to administer oaths to any witness in
5 any proceeding or examination instituted before it or
6 conducted by it with reference to any matter within its
7 jurisdiction. In all hearings or proceedings before the state
8 fire commission the evidence of witnesses and the pro-
9 duction of documentary evidence may be required at any
10 designated place of hearing; and in case of disobedience to
11 a subpoena or other process the state fire commission or
12 any party to the proceedings before the commission may
13 invoke the aid of any circuit court in requiring the evi-
14 dence and testimony of witnesses and the production of
15 papers, books and documents. And such court, in case of
16 refusal to obey the subpoena issued to any person subject
17 to the provisions of this chapter, shall issue an order re-
18 quiring such person to appear before the state fire com-
19 mission and produce all books and papers, if so ordered,
20 and give evidence touching the matter in question.

**§29-3-8. Office of state fire administrator created; appointment;
term of office; removal; compensation; employees;
equipment.**

1 (a) There is hereby created a state fire administrator
2 who shall be appointed by the governor from a list of
3 names submitted by the state fire commission.

4 (b) The state fire administrator shall serve for a
5 six-year term after which time reappointment shall be
6 discretionary with the governor. In cases where a re-
7 appointment is not made, the governor shall make the
8 appointment from a list of names submitted by the state
9 fire commission. The state fire administrator can be re-
10 moved by the governor, on recommendation by the state
11 fire commission for neglect of duty or other conduct
12 unbecoming his office. Prior to removal he shall be given
13 timely notice by the commission, along with a statement
14 of the charges against him. He shall be provided an op-
15 portunity to appear in person or by counsel for a public
16 hearing thereon.

17 (c) The annual salary of the state fire administrator

18 shall be twenty thousand dollars. He may employ such
19 technical, clerical, stenographic and other personnel and
20 fix their compensation, and may incur such expenses as
21 may be necessary in the performance of the duties of his
22 office within the appropriation therefor. Employees of the
23 state fire administrator's office shall be members of the
24 state civil service system, and all appointments of the
25 office shall be a part of the classified service under the
26 civil service system.

27 (d) The state fire administrator and other personnel of
28 the state fire administrator's office shall be provided with
29 appropriate office space, furniture, equipment, supplies,
30 stationery and printing in the same manner as provided
31 for other state agencies.

**§29-3-9. Powers, duties and authority of state fire commission
and state fire administrator.**

1 (a) The state fire commission is responsible for fire
2 programs within this state, including the state fire ad-
3 ministrator, state fire marshal's office, training, uniform
4 standards and certification, finance and planning and
5 fire prevention.

6 (b) All state and area training and education in fire
7 service shall be coordinated by the state fire commis-
8 sion. The state fire administrator shall insure that these
9 programs are operated throughout the state at a level
10 consistent with needs identified by the commissioner.

11 (c) The state fire commission shall develop minimum
12 training levels for fire fighters, minimum levels of equip-
13 ment needed to protect life and property within fire
14 service areas, minimum performance standards the de-
15 partments must meet in response times, communica-
16 tions, minimum levels of water flow and pressure and
17 other performance measures as deemed necessary to
18 meet the overall goals of improved fire prevention and
19 control.

20 (d) The formation of any new fire department, in-
21 cluding volunteer fire departments, shall require the
22 concurrence of the state fire commission. The state fire
23 commission shall develop a method of certification which

24 can be applied to all fire departments and volunteer fire
25 departments.

26 (e) The state fire commission shall develop a plan for
27 fire prevention and control which shall include but not
28 be limited to the following areas: Manpower needs;
29 location of training centers; location of fire prevention
30 and control units; communications; fire fighting facilities;
31 water sources; vehicular needs; public education
32 and information; public participation; standardization in
33 record keeping; evaluation of personnel; reporting of fire
34 hazards; programs on mutual aid; location of public
35 safety agencies; outline of fire prevention programs; and
36 accessibility of fire prevention information.

37 (f) The state fire commission shall establish fire protection
38 areas and at such times as funds are available
39 shall establish field offices for inspection, planning and
40 certification.

**§29-3-10. State fire marshal's office transferred to state fire
commission; powers and duties of state insurance
commissioner with respect to fire marshal terminated;
operation of commission prior to adoption
of code.**

1 The state fire marshal and the state fire marshal's
2 office, heretofore existing in this code, are hereby continued
3 in all respects except that all powers and duties
4 exercised by the state insurance commissioner with
5 respect to the state fire marshal and the state fire
6 marshal's office are terminated and all such powers
7 and duties are hereby transferred to and vested in the
8 state fire commission except as provided otherwise in
9 this article. Until the adoption of a state fire code by
10 the state fire commission, the state fire marshal shall
11 operate under the authority of this article and the
12 authority of the rules and regulations heretofore promulgated
13 by the state fire marshal.

**§29-3-11. Appointment of state fire marshal; term of office;
removal; salary; qualifications; responsibilities;
employees; equipment.**

1 (a) The state fire commission shall appoint a state

2 fire marshal in accordance with the qualifications ap-
3 proved by the state civil service commission as provided
4 in article six, chapter twenty-nine of this code. He can
5 be removed by the commission at any time for neglect
6 of duty or other conduct unbecoming his office as
7 provided in article six, chapter twenty-nine of this
8 code.

9 (b) The state fire marshal, within policy established
10 by the state fire commission, shall have all responsi-
11 bility for the implementation of fire safety programs in
12 this state designated to minimize fire hazards and dis-
13 asters and loss of life and property from these causes.
14 These responsibilities include, but are not limited to,
15 the establishment and enforcement of fire safety prac-
16 tices throughout the state, preventive inspection and
17 correction activities, coordination of fire safety programs
18 with volunteer and paid fire departments and critical
19 analysis and evaluation of West Virginia's fire loss sta-
20 tistics for determination of problems and solutions.

21 (c) The state fire marshal may employ such tech-
22 nical, clerical, stenographic and other personnel and fix
23 their compensation and may incur such expenses as may
24 be necessary in the performance of the duties of his
25 office within the appropriation therefor. Employees of
26 the fire marshal's office shall be members of the state
27 civil service system, and all appointments of the office
28 shall be a part of the classified service under the civil
29 service system.

30 (d) The state fire marshal and other personnel of the
31 state fire marshal's office shall be provided with appro-
32 priate office space, furniture, equipment, supplies, sta-
33 tionery and printing in the same manner as provided for
34 other state agencies.

§29-3-12. Powers and duties of state fire marshal.

1 (a) *Enforcement of laws.* The state fire marshal shall
2 enforce all laws of the state having to do with:

3 (1) Prevention of fire.

4 (2) The storage, sale and use of any explosive, com-

5 bustible or other dangerous article in solid, flammable
6 liquid or gas form.

7 (3) The installation and maintenance of equipment of
8 all sorts intended to extinguish, detect and control
9 fires.

10 (4) The means and adequacy of exit, in case of fire,
11 from buildings and all other places in which persons
12 work, live or congregate from time to time for any pur-
13 pose, except buildings used wholly as dwelling houses
14 for no more than two families.

15 (5) The suppression of arson.

16 (b) *Assistance upon request.* Upon request, the state
17 fire marshal shall immediately assist any chief of any
18 recognized fire company or department.

19 (c) *Enforcement of regulations.* The state fire marshal
20 shall enforce the regulations promulgated by the state
21 fire commission as authorized by section three of this
22 article.

23 (d) *Inspections generally.* The state fire marshal shall
24 inspect all state, county and municipally owned institu-
25 tions, all public and private schools, theaters, churches
26 and other places of public assembly as to fire exits and
27 reasonable safety standards and report his findings and
28 recommendations to the proper administrative heads.

29 (e) *Right of entry.* The state fire marshal may at all
30 reasonable hours enter any building or premises, except
31 those actually occupied for single family dwelling pur-
32 poses, for the purpose of making an inspection, which
33 he may deem necessary to be made under the provisions
34 of this article.

35 (f) *Investigations.* The state fire marshal may at any
36 time investigate as to the origin or circumstances of any
37 fire or explosion or attempt to cause fire or explosion
38 occurring in the state. The state fire marshal shall have
39 the authority at all times of the day or night, in per-
40 formance of the duties imposed by the provisions of this
41 article, to investigate where any fires or attempt to cause

42 fires shall have occurred, or which at the time may be
43 burning.

44 (g) *Testimony and arrests.* The state fire marshal, in
45 making an inspection or investigation, when in his judg-
46 ment such proceedings are necessary, may take the testi-
47 mony under oath of all persons who may be cognizant
48 of any facts, or have any knowledge about the matter to
49 be examined and inquired into, and may have the testi-
50 mony reduced to writing; and, when in his judgment
51 such examination discloses that the fire or explosion or
52 attempt to cause a fire or explosion was of incendiary
53 origin, the state fire marshal may arrest the supposed in-
54 incendiary or have him arrested and charged with the
55 crime: *Provided*, That if the state fire marshal suspects
56 that a person is an incendiary, he shall not interrogate the
57 supposed incendiary before the suspect shall have appear-
58 ed before a magistrate or other judge; and shall transmit
59 a copy of the testimony so taken to the prosecuting attor-
60 ney for the county wherein the fire or explosion or at-
61 tempt to cause a fire or explosion occurred.

62 (h) *Witnesses and oaths.* The state fire marshal is
63 empowered and authorized to issue subpoenas and sub-
64 poenas duces tecum, to compel the attendance of persons
65 before him to testify in relation to any matter which is,
66 by the provision of this article, a subject of inquiry and
67 investigation by the state fire marshal and cause to be
68 produced before him such papers as he may require in
69 making such examination. The state fire marshal is here-
70 by authorized to administer oaths and affirmations to
71 persons appearing as witnesses before him. False swear-
72 ing in any matter or proceeding aforesaid shall be deemed
73 perjury and shall be punishable as such.

74 (i) *Deputizing members of fire departments in this state.*
75 The state fire marshal may deputize a member of any fire
76 department, duly organized and operating in this state,
77 who is approved by the chief of his department and who
78 is properly qualified, to act as his assistants for the pur-
79 pose of making such inspections and investigations and
80 carrying out such orders as may be prescribed by him,
81 to enforce and make effective the provisions of this

82 article and any and all regulations promulgated by
83 the state fire commission under authority of this article.

84 (j) *Written report of examinations.* The state fire
85 marshal shall, at the request of the county commission
86 of any county or the municipal authorities of any in-
87 corporated municipality in this state, make to them a
88 written report of the examination made by him regarding
89 any fire happening within their respective jurisdictions.

90 (k) *Report of losses by insurance companies.* It shall
91 be the duty of each fire insurance company or asso-
92 ciation doing business in this state, within ten days
93 after the adjustment of any loss sustained by it that ex-
94 ceeds fifteen hundred dollars, to report to the state fire
95 marshal, upon forms furnished by him, such information
96 regarding the amount of insurance, the value of the
97 property insured and the amount of claim as adjusted,
98 as in the judgment of the state fire marshal it is necessary
99 for him to know. This report is in addition to any such
100 information required by the state insurance commissioner.
101 Upon the request of the owner or insurer of any property
102 destroyed or injured by fire or explosion, or in which an
103 attempt to cause a fire or explosion may have occurred,
104 the state fire marshal shall make a written report to the
105 person requesting the same of the result of the examina-
106 tion made by him regarding the property.

107 (l) *Issuance of permits and licenses.* The state fire
108 marshal is authorized to issue permits and licenses as
109 required in this article.

§29-3-13. Annual reports.

1 The state fire commission shall transmit annually to
2 the governor by October thirty-first of each year, an an-
3 nual report of its activities for the preceding fiscal year.
4 The annual reports shall include documents pertaining to
5 the function and operation of the state fire administrator's
6 office and the state fire marshal's office for the preceding
7 fiscal year.

§29-3-14. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply and right to appeal.

1 (a) No person shall erect, construct, reconstruct, alter,
2 maintain or use any building, structure or equipment
3 or use any land in such a way to endanger life or property
4 from the hazards of fire or explosion, or in violation of
5 any regulation, or any provision or any change thereof
6 promulgated by the state fire commission under the au-
7 thority of this article.

8 (b) Whenever the state fire marshal determines that
9 any building or structure has been constructed, altered or
10 repaired in a manner violating any regulation lawfully
11 promulgated by the state fire commission prior to the
12 commencement of such construction, alteration or repairs;
13 or whenever he may determine that any building or
14 structure constitutes a fire hazard by reason of want of
15 repair, age or dilapidated or abandoned condition, or
16 otherwise, and is so situated as to endanger other build-
17 ings and property; or whenever he may find in any build-
18 ing or upon any premises any combustible, flammable or
19 explosive substance or material, or other conditions dan-
20 gerous to the safety of persons occupying the building or
21 premises and adjacent premises or property, he may make
22 reasonable orders in writing, directed to the owner of such
23 building, structure or premises, for the repair or demoli-
24 tion of such building or structure, or the removal of the
25 combustible, flammable or explosive substance or ma-
26 terial, as the case may be, and the remedying of any
27 conditions found to be in violation of a regulation promul-
28 gated as aforesaid or to be dangerous to the safety of
29 persons or property.

30 A true copy of every order of the state fire marshal as
31 provided for in this section shall be filed in the county
32 where the premises are totally or partially located, with
33 the county clerk who shall index and record the order in
34 the general lien book. Upon filing, the order constitutes
35 notice of such proceedings to all persons or parties there-
36 after having dealings involving said property.

37 A statement of the expenses and administrative charges
38 shall also be filed with the county clerk, recorded and
39 indexed in the general lien book and upon filing, shall
40 become a lien against the property. Thereafter a court
41 supervised sale of the property to enforce the collection of
42 the expenses and administrative charges may be prosecuted
43 at the request of the state fire marshal, state fire
44 commission or the attorney general.

45 Every order provided for in this section shall contain
46 a notice that compliance therewith shall be required
47 within a period of thirty days from the date of issuance
48 thereof and also that any person desiring to contest the
49 validity of any such order may enter an appeal from such
50 order to the state fire commission and then to the circuit
51 court in the county where the premises are totally or partially
52 located as provided in section eighteen of this article.

§29-3-15. Service of repair or demolition order.

1 The written order of the state fire marshal made pursuant
2 to section fourteen of this article shall be served
3 by delivering a true copy thereof to such owner, or, if
4 the owner is absent from the state or his whereabouts
5 be unknown to the state fire marshal, by mailing a true
6 copy thereof by certified mail to the said owner's last
7 known post-office address, or if no such address be known,
8 then by certified mail to said owner in care of general
9 delivery at the post office serving the community in
10 which said premises lie; the delivering or mailing of
11 such order to be accomplished within five days from
12 the date of the issuance of such order. And in the event
13 it is necessary to mail a copy of such order as aforesaid,
14 the officer mailing the same shall also, within five days
15 from the date of issuance of such order, post a true copy
16 thereof in a conspicuous place on the door or other
17 prominent entrance to said premises.

§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

1 In the event any owner of any building or premises
2 served with a copy of an order as provided in sections

3 fourteen and fifteen of this article shall fail substan-
4 tially to comply with such order within thirty days from
5 the date of issuance thereof, or within thirty days after
6 any appeal from such order has been affirmed by the
7 state fire commission or by the court, the state fire
8 marshal may enter into and upon the premises affected
9 by such order and cause the building, structure or prem-
10 ises to be repaired, torn down, materials removed and
11 all dangerous conditions to be remedied, as the case
12 may be, at the expense of the owner and with any ad-
13 ministrative charges as established by the commission
14 also being borne by the owner, and if such person shall
15 fail or neglect to repay the state fire marshal the expense
16 and administrative charge thereby incurred by him,
17 within thirty days after written demand shall have been
18 delivered or mailed to the said owner as provided in
19 section fifteen of this article, the state fire marshal is
20 hereby authorized to bring an action in the name of
21 the state to recover such expenses, with interest, and
22 any administrative charge as established by the commis-
23 sion, in any court of competent jurisdiction.

§29-3-17. Additional remedies to abate, etc., fire hazards.

1 In case any building, structure or equipment is or is
2 proposed to be erected, constructed, reconstructed, al-
3 tered, maintained or used, or any land is or is proposed
4 to be used in such a way to endanger life or property
5 from the hazards of fire or explosion or in violation of
6 this article or of any regulation or provision of any regu-
7 lation, or change thereof promulgated by the state fire
8 commission under the authority granted by this article,
9 the state fire commission, the state fire marshal or the
10 attorney general may, in addition to other remedies
11 provided by law, institute injunction, mandamus, abate-
12 ment or any other appropriate action or actions, pro-
13 ceedings to prevent, enjoin, abate or remove such un-
14 lawful erection, construction, reconstruction, alteration,
15 maintenance or use.

§29-3-18. Appellate procedure generally.

1 (a) Appeals to the state fire commission may be taken

2 by any person aggrieved by an order or decision of the
3 state fire marshal based upon or made in the course of
4 the administration or enforcement of the provisions of
5 this article. Appeals to the state fire commission may
6 be taken by any officer, department, board or agency
7 of the state and political subdivisions thereof adversely
8 affected by an order or decision of the state fire marshal
9 in the course of the administration or enforcement of
10 the provisions of this article.

11 (b) The time within which such appeal must be
12 made, and the effect, form or other procedure relating
13 thereto, including the appointment and function of a
14 hearing examiner, shall be as specified in regulations
15 promulgated by the state fire commission in accordance
16 with provisions of the administrative procedure act,
17 chapter twenty-nine-a of this code.

18 (c) Any party aggrieved by a final decision of the
19 state fire commission is entitled to judicial review as
20 provided in the administrative procedure act, chapter
21 twenty-nine-a of this code. The state fire marshal is
22 hereby determined to be a party aggrieved as to any
23 decision of the state fire commission reversing or alter-
24 ing the prior order of the state fire marshal and the state
25 fire marshal shall be a necessary party to any judicial
26 review involving a state fire marshal order.

**§29-3-19. Establishment of demonstration buildings and equip-
ment for educational instruction in fire prevention
and protection; payment therefor.**

1 The state fire marshal is authorized to establish for
2 educational purposes in public and private schools and
3 state educational institutions demonstration buildings
4 and equipment for fire prevention and protection, and
5 such expenditures therefor shall be made from the funds
6 appropriated therefor to the office of the state fire
7 marshal.

**§29-3-20. Allowance for reporting fires; when allowance not
granted.**

1 There shall be paid to the fire department making the

2 report the sum of ten dollars for each fire reported to,
3 and in compliance with regulations of, the state fire
4 marshal.

5 All chiefs of fire departments who receive a stated
6 salary or are paid a stated sum for each fire fought, and
7 mayors of municipalities who receive a stated salary
8 exceeding twenty dollars per year, shall be precluded
9 from receiving any extra allowance for the reports men-
10 tioned in this section.

§29-3-21. False alarm of fire; penalties.

1 No person shall make, turn in or telephone, or by use
2 of any means or methods of communication aid or abet
3 in the making or turning in of, any alarm of fire which
4 he knows to be false at the time of making or turning
5 in the alarm.

§29-3-22. Tax on insurance companies.

1 Every insurance company doing business in this state,
2 except farmers' mutual fire insurance companies, shall pay
3 to the state insurance commissioner annually on or before
4 the first day of March, in addition to the taxes now re-
5 quired by law to be paid by such companies, one half
6 of one percent of the net direct premium receipts of
7 such companies on insurance against the hazard of
8 fire and on that portion of all other net direct premiums
9 reasonably applicable to insurance against the hazard
10 of fire which are included in other coverages, and received
11 by it for insurance on property or risks in this state
12 during the calendar year next preceding as shown by
13 their annual statement under oath to the insurance de-
14 partment. The money so received by the state insurance
15 commissioner shall be paid by him into the treasury and
16 credited to the state general revenue fund.

17 In the event of a controversy as to the proper deter-
18 mination of the premium base on which this tax is to be
19 computed, a hearing may be had by the state insurance
20 commissioner on the application of any interested person,
21 corporation or association, which hearing shall be held
22 after reasonable notice. Any party aggrieved by a final

23 decision of the state insurance commissioner is entitled to
24 judicial review as provided in the administrative proce-
25 dure act, chapter twenty-nine-a of this code.

§29-3-23. "Fireworks" defined; labels required.

1 The term "fireworks" means and includes any com-
2 bustible or explosive composition, or any substance or
3 combination of substances, or article prepared for the pur-
4 pose of producing a visible or an audible effect by com-
5 bustion, explosion, deflagration or detonation, and shall
6 include blank cartridges, toy pistols, toy cannons, toy
7 canes or toy guns in which explosives are used, the type
8 of unmanned balloons which require fire underneath to
9 propel the same, firecrackers, torpedoes, skyrockets, ro-
10 man candles, daygo bombs, sparklers or other fireworks
11 of like construction and any fireworks containing any
12 explosive or flammable compound, or any tablets or other
13 device containing any explosive substance, except that
14 the term "fireworks" shall not include model rockets and
15 model rocket engines, designed, sold and used for the
16 purpose of propelling recoverable acro models and shall
17 not include toy pistols, toy canes, toy guns or other de-
18 vices in which paper or plastic caps manufactured in ac-
19 cordance with the United States department of trans-
20 portation regulations for packing and shipping of toy
21 paper or plastic caps are used and toy paper or plastic
22 caps manufactured as provided therein, the sale and use
23 of which shall be permitted at all times. Each package
24 containing toy paper or plastic caps offered for retail sale
25 shall be labeled to indicate the maximum explosive con-
26 tent per cap.

§29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.

1 Except as hereinafter provided, no person, firm, co-
2 partnership or corporation shall offer for sale, expose
3 for sale, sell at retail, keep with intent to sell at retail,
4 or use or explode any fireworks: *Provided*, That the state
5 fire marshal may adopt reasonable rules and regulations
6 for the granting of permits for supervised displays of

7 fireworks by municipalities, fair associations, amusement
8 parks, and other organizations or groups of individuals.
9 Such permits may be granted upon application to said
10 state fire marshal and after approval of the local police
11 and fire authorities of the community wherein the display
12 is proposed to be held as provided herein and the filing
13 of a bond by the applicant as provided hereinafter. Every
14 such display shall be handled by a competent operator
15 licensed or certificated as to competency by the state fire
16 marshal and shall be of such composition, character, and
17 so located, discharged or fired as in the opinion of the chief
18 of the fire department, after proper inspection, and of the
19 chief of police shall not be hazardous to property or
20 endanger any person or persons. After such privilege shall
21 have been granted, sales, possessions, use and distribution
22 of fireworks for such display shall be lawful for that
23 purpose only. No permit granted hereunder shall be
24 transferable.

25 The governing body or chief executive authority of the
26 municipality shall require a bond from the licensee in a
27 sum not less than one thousand dollars conditioned on
28 compliance with the provisions of this article and the
29 regulations of the state fire commission, provided no
30 municipality shall be required to file such bond.

31 Before any permit for a pyrotechnic display shall be
32 issued, the person, firm or corporation making application
33 therefor shall furnish proof of financial responsibility to
34 satisfy claims for damages to property or personal injuries
35 arising out of any act or omission on the part of such
36 person, firm or corporation or any agent or employee
37 thereof, in such amount, character and form as the state
38 fire marshal determines to be necessary for the protection
39 of the public.

§29-3-25. Interstate sale and shipment; permitted uses.

1 No permit shall be issued under the provisions of this
2 article to a nonresident person, firm or corporation for
3 conduct of a pyrotechnic display in this state until
4 such person, firm or corporation shall have appointed
5 in writing a member of the bar of this state and re-

6 siding therein to be his attorney upon whom all process
7 in any action or proceeding against him may be served.

8 Nothing in this article shall be construed to prohibit
9 any resident wholesaler, dealer or jobber to sell at
10 wholesale such fireworks as are not herein prohibited
11 or the sale of any kind of fireworks provided the same
12 are to be shipped directly out of state in accordance
13 with regulations of the United States department of
14 transportation covering the transportation of explosives
15 and other dangerous articles by motor, rail and water,
16 or the use of fireworks by railroads or other transporta-
17 tion agencies for signal purposes or illumination, or the
18 sale or use of blank cartridges for a show or theater,
19 or for signal or ceremonial purposes in athletics or
20 sports, or for use by military organizations, or the use
21 of fireworks for agricultural purposes under conditions
22 approved by the local authority.

§29-3-26. Seizures by fire marshal; enforcement of law.

1 The state fire marshal shall seize, take, remove and
2 destroy, or cause to be seized, taken or removed and
3 destroyed, at the expense of the owner, all stocks of
4 fireworks or combustibles offered or exposed for sale,
5 stored or held in violation of this article. It shall be
6 the duty of the department of public safety, sheriffs,
7 municipal policemen and other law-enforcement officers
8 to assist in the enforcement of this article.

§29-3-27. Penalties.

1 (a) Any person who violates any regulations pro-
2 mulgated by the state fire commission as provided in
3 section five of this article, shall be guilty of a misde-
4 meanor, and, upon conviction thereof, shall be fined not
5 more than one hundred dollars or imprisoned in the
6 county jail not more than ninety days, or both fined and
7 imprisoned.

8 Each and every day during which any illegal erection,
9 construction, reconstruction, alteration, maintenance or
10 use continues after knowledge or official notice that same
11 is illegal shall be deemed a separate offense.

12 (b) Any person who violates the provisions of sec-
13 tion twenty-one of this article shall be guilty of a mis-
14 demeanor, and, upon conviction thereof, shall be fined
15 for a first offense not more than one hundred dollars or
16 imprisoned in the county jail for not more than thirty
17 days, or both fined and imprisoned, and for a second
18 and each subsequent offense fined not less than one
19 hundred dollars nor more than five hundred dollars or
20 imprisoned in the county jail for not less than ninety
21 days nor more than one year, or both fined and impris-
22 oned.

23 (c) Any officer who shall fail to perform any duty
24 required of him by this article or who shall violate any
25 of its provisions shall be guilty of a misdemeanor, and,
26 upon conviction thereof, shall be fined not less than
27 twenty-five dollars nor more than fifty dollars for each
28 failure or violation.

29 (d) Any person who violates any other provision of
30 this article shall be guilty of a misdemeanor, and, upon
31 conviction thereof, shall be fined not more than one hun-
32 dred dollars, or imprisoned in the county jail not more
33 than ninety days, or both fined and imprisoned.

**§29-3-28. Transfer of certain state employees; perpetuation of
rules, regulations and orders.**

1 (a) All employees, agents or officers of any state agency,
2 department or commission, the functions of which are
3 transferred to the state fire commission by the provisions
4 of this article, and whose employment is covered and
5 protected by the provisions of article six, chapter twenty-
6 nine of this code and the rules and regulations promul-
7 gated by the civil service commission, and whose service
8 is classified by such provisions, rules and regulations, shall
9 continue in their employment in all respects and in the
10 same classification, coverage and protection upon the
11 transfer of such functions from the agency, department or
12 commission by which they were employed to the state
13 fire commission.

14 (b) All rules and regulations promulgated and all
15 orders in effect and all proceedings pending on the effec-

16 tive date of this chapter, which were promulgated or ef-
17 fected or brought under any authority transferred to the
18 state fire commission herein created and, as herein provid-
19 ed, shall remain in full effect unless otherwise provided in
20 this article or until amended, revoked, suspended, modi-
21 fied, repealed or superseded, as the case may be.

§29-3-29. Construction.

1 Being in the interest of public safety, the provisions
2 of this article shall be liberally construed.

§29-3-30. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be un-
3 constitutional or invalid, such invalidation shall not
4 affect the validity of the remaining portions of this
5 article, and, to this end, the provisions of this article
6 are hereby declared to be severable.

♦

CHAPTER 52

(H. B. 829—By Mr. Teets)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the state board of health; its membership, appointment, removal and qualifications of members; per diem compensation of members, and reimbursement for travel expenses.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE DEPARTMENT OF HEALTH.**§16-1-2. Board of health—Body corporate, etc.; membership; appointment and removal of members; compensation.**

1 There shall be a state board of health, to be known as the
2 West Virginia board of health, which shall be a corporation
3 and as such may contract and be contracted with, plead
4 and be impleaded, sue and be sued, and have and use a
5 common seal. The state board of health shall consist of
6 nine members, who shall be appointed by the governor,
7 by and with the advice and consent of the Senate. Three
8 members of the board shall be physicians or surgeons holding
9 the degree of doctor of medicine, one shall be a dentist,
10 one shall be an osteopathic physician, one shall be a registered
11 nurse, one shall be a pharmacist, one shall be chosen as
12 the representative of the hospitals licensed in the state of
13 West Virginia and one shall be a representative citizen, who
14 shall not be an employee of, or connected in any way with, any
15 hospital licensed in this state, and who shall not be a member
16 of any of the professions named above. The registered nurse
17 representative shall first be appointed at the next expiration
18 of a term of a representative citizen, or, in the event of a
19 vacancy in the term of a representative citizen, to fill his unex-
20 pired term. Until a vacancy occurs, or until the expiration of
21 the term of a representative citizen, whichever shall occur first,
22 two representative citizens shall remain on the board.

23 All persons appointed to membership on the state board
24 of health shall be citizens of this state and shall have
25 been such citizens and residents of the state for at least
26 five years prior to the date of their appointment. Every
27 professional member of the said board shall be duly licensed
28 to practice the profession of such person in this state on
29 the date of appointment and shall have been so licensed
30 and have been actively practicing his profession for at least
31 five years immediately preceding the date of such appointment.
32 Before appointing any professional member, the governor shall
33 request the state professional society of the profession practiced
34 by any proposed appointee to furnish to the governor a full
35 and complete report concerning the qualifications and suit-
36 ability of the proposed appointee. All members of the board
37 shall be appointed for terms of nine years each. Any vacancy

38 on the board shall be filled by the governor by appointment for
39 the unexpired term.

40 No more than five of the members of the board shall belong
41 to the same political party. Not less than one nor more
42 than three members shall be appointed from the same con-
43 gressional district. No person shall be eligible for appoint-
44 ment to membership on the state board who is a member of
45 any political party executive committee, or who holds any
46 public office or public employment under the federal govern-
47 ment or under the government of this state or any of its
48 political subdivisions, or who is an appointee or employee of
49 the board. All members shall be eligible for reappointment.

50 No member may be removed from office by the governor
51 except for official misconduct, incompetence, neglect of duty
52 or gross immorality and then only in the manner prescribed
53 by law for the removal by the governor of state elective
54 officers: *Provided*, That the expiration or revocation of the
55 professional license of any professional member of the board
56 shall be cause for his removal.

57 The members of the board shall be paid the sum of thirty-
58 five dollars for each day actually served in attendance at
59 official meetings of the board. Each member shall be reim-
60 bursed for travel at the rate of fifteen cents per mile if by
61 private automobile and actual cost if travel is by common
62 carrier. Each member shall also be reimbursed for other actual
63 expenses incurred in the performance of the duties of his office.

⌄

CHAPTER 53

(S. B. 523—By Mr. Rogerson and Mr. Huffman)

[Passed March 17, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section seven, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article,

designated article four-d, all relating to the "Emergency Medical Services Act of 1976"; emergency medical services advisory council; duties, composition, appointment, meetings and expenses thereof; legislative findings and declaration of policy; definitions; office of emergency medical services, director, staffing; powers and duties; and powers to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That section seven, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article four-d, all to read as follows:

Article

4C. Emergency Medical Service.

4D. Emergency Medical Services Act.

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

§16-4C-7. Emergency medical service advisory council; duties, composition, appointment, meetings, compensation and expenses.

1 The emergency medical service advisory council, here-
2 tofore created and established, shall be continued for
3 the purpose of assisting the state board in developing
4 standards for emergency medical service attendants;
5 and for the purpose of providing advice to the office
6 of emergency medical services and the director thereof,
7 as established by article four-d of this chapter, with
8 respect to reviewing and making recommendations for
9 and providing assistance to the establishment and main-
10 tenance of adequate emergency medical services for all
11 areas of this state.

12 The council shall be composed of ten members ap-
13 pointed by the governor. The governor shall appoint
14 one representative each from the West Virginia asso-
15 ciation of county officials, West Virginia council of
16 towns and cities, West Virginia state firemen's as-
17 sociation, American red cross, West Virginia hos-
18 pital association, West Virginia state medical association,

19 West Virginia funeral directors association, governor's
20 highway safety administration, one person to rep-
21 resent private commercial ambulance services within
22 the state and one person to represent emergency rescue
23 squads operating within the state. The person ap-
24 pointed from the West Virginia funeral directors as-
25 sociation shall be a person who provides ambulance
26 service at the time of his appointment and throughout
27 his term.

28 Initially, the governor shall appoint four members
29 of the council for terms of two years and five for terms
30 of four years. Thereafter, appointments shall be for
31 terms of four years and made in a manner to preserve
32 the representation of the council as it was originally
33 comprised.

34 The council shall choose its own chairman and meet
35 at the call of the director of the state department of
36 health or the director of the office of emergency med-
37 ical services. The council shall not meet more than
38 five times in any one year, nor more than four times
39 with only one of the above-mentioned agencies.

40 The members of such council shall be compensated
41 at the rate of fifty dollars per day for the attendance
42 of council meetings. The members of such council may
43 be reimbursed for any and all reasonable and necessary
44 expenses actually incurred in the performance of their
45 duties: *Provided*, That the total compensation and ex-
46 pense allowances to any member of such council for
47 any fiscal year shall not exceed in the aggregate the
48 sum of six hundred dollars.

ARTICLE 4D. EMERGENCY MEDICAL SERVICES ACT.

§16-4D-1. Short title.

§16-4D-2. Legislative findings and declaration of policy.

§16-4D-3. Definitions.

§16-4D-4. Office of emergency medical services created; appointment, etc.,
of director; staffing.

§16-4D-5. Advisory function of council; powers and duties of director.

§16-4D-6. Rules and regulations.

§16-4D-1. Short title.

1 This article shall be known as the "Emergency Med-
2 ical Services Act of 1976."

§16-4D-2. Legislative findings and declaration of policy.

1 The Legislature hereby finds and declares that:

2 (a) Emergency medical services in this state are
3 not uniformly available to all of the citizens and resi-
4 dents of this state;

5 (b) The establishment and maintenance of adequate
6 emergency medical service systems for the entire state
7 is necessary to promote the health and welfare of
8 the citizens and residents of this state;

9 (c) By coordinating the efforts of all emergency
10 medical service providers a more efficient system of
11 emergency medical services can be effected;

12 (d) Emergency medical services is a public purpose
13 and a responsibility of government for which public
14 money may be spent; and

15 (e) It is the policy of this state that an effective
16 effort be made to make emergency medical services
17 available to all of its citizens and residents in the most
18 efficient manner practicable and that it is necessary
19 that an agency of this state be created and maintained
20 for the purpose of providing and coordinating emergency
21 medical services, and that such agency be delegated
22 such powers and duties as may be necessary and appro-
23 priate to effectuate the public purposes and policy of
24 this state as herein declared. This article is, accordingly,
25 enacted in view of those findings and declarations of
26 policy and shall be liberally construed in order to effec-
27 tuate the public policy of this state as herein stated.

§16-4D-3. Definitions.

1 For the purposes of this article:

2 (a) The term "director" shall mean the director of
3 the office of emergency medical services as defined in
4 section four of this article;

5 (b) The term "council" shall mean the emergency
6 medical services advisory council created pursuant to
7 article four-c of this chapter;

8 (c) The term "emergency medical services" shall
9 mean all services which are included in and made a
10 part of the emergency medical services plan as herein
11 provided for and shall include attending, caring for
12 and giving lifesaving or life preserving treatment to a
13 patient transported in an ambulance; and

14 (d) The term "patient" means any sick, injured,
15 wounded, or otherwise incapacitated person or an ex-
16 pectant mother who needs medical, hospital or clinical
17 services under existing or imminent emergency situation.

**§16-4D-4. Office of emergency medical services created; ap-
pointment, etc., of director; staffing.**

1 There is hereby created within state government an
2 office to be known as the office of emergency medical
3 services. A director of the office of emergency medical
4 services hereinafter called the "director" shall be ap-
5 pointed by the governor in accordance with the provi-
6 sions of section two-a, article seven, chapter six of this
7 code. The director shall be qualified by both training
8 and experience to perform the duties of his office. The
9 director may be a licensed physician within the state of
10 West Virginia.

11 The director may employ such technical, clerical,
12 stenographic and other personnel as may be necessary
13 to carry out the purposes of this article. The director
14 and such other personnel may be paid from funds appro-
15 priated therefor or from such other funds as may be
16 made available for carrying out the purposes of this
17 article.

18 The annual salary of the director shall be established
19 by the council subject to approval by the governor.

**§16-4D-5. Advisory function of council; powers and duties of
director.**

1 The council shall have the duty to advise the di-
2 rector in all matters pertaining to his duties and

3 functions in relation to carrying out the purposes of this
4 article.

5 The director shall have the following powers and
6 duties:

7 (a) To apply for, receive, and expend advances,
8 grants, contributions and other forms of assistance from
9 the state or federal government or from any private
10 or public agencies or foundations to carry out the
11 provisions of this article.

12 (b) To design, develop and review annually a com-
13 prehensive statewide emergency medical services plan.
14 Such plan shall be limited to recommendations, aid,
15 assistance and all such acts as shall be necessary:

16 (1) To encourage local participation by area, county
17 and community officials and regional councils established
18 under chapter eight of this code, and

19 (2) To encourage or provide for the development
20 of a system for monitoring and evaluating emergency
21 medical services programs throughout the state.

22 (c) To provide professional and technical assistance
23 and to make information available to regional inter-
24 agency councils and other potential applicants or pro-
25 gram sponsors of emergency medical services.

26 (d) To assist local government agencies or regional
27 interagency councils and other public bodies in obtain-
28 ing federal, state or other available funds and ser-
29 vices.

30 (e) To cooperate and work with federal, state and
31 local governmental agencies and private organizations
32 and persons in the promotion and implementation of
33 the state plan.

34 (f) To enter into such contracts with persons and
35 other entities as may be necessary and expedient to
36 carry out the stated purposes of this article.

37 (g) To acquire in the name of the state by grant,
38 purchase, gift, devise or any other methods such ap-

39 appropriate real and personal property as may be reason-
40 able and necessary to carry out the purposes of this
41 article.

42 (h) To make grants and allocations of funds and
43 property so acquired or which may have been appro-
44 priated to such agency to other agencies of state and
45 local government as may be appropriate to carry out the
46 purposes of this article.

47 (i) To expend and distribute by grant or bailment
48 such funds and property to all such state and local
49 agencies for the purpose of performing the duties and
50 responsibilities of such agency all such funds which it
51 may have so acquired or which may have been appro-
52 priated by the Legislature of this state.

53 (j) To develop a program to inform the public con-
54 cerning emergency medical services programs.

55 (k) To review and disseminate information regard-
56 ing federal grant assistance relating to emergency med-
57 ical services.

58 (l) To prepare and submit to the governor and
59 Legislature recommendations for legislation in the area
60 of emergency medical services.

61 (m) To review and make recommendations for and
62 to assist or aid in all projects and programs which pro-
63 vide for emergency medical services regardless of
64 whether or not such projects or programs are funded
65 through the office of emergency medical services. Such
66 review and approval shall be required for all emer-
67 gency medical services projects, programs or services
68 which are eligible to receive state, federal, local or
69 private funds for their operation after the effective date
70 of this article.

71 (n) To take all necessary and appropriate action to
72 encourage and foster the cooperation of all emergency
73 medical service facilities with this state.

§16-4D-6. Rules and regulations.

1 The office of emergency medical services shall make

2 and publish such rules and regulations, not inconsistent
3 with the provisions of this article, as it finds necessary
4 or appropriate to the efficient administration of the func-
5 tions with which it is charged under this article.

CHAPTER 54

(Com. Sub. for H. B. 1541—By Mr. Shiflet and Mr. Artrip)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suspension or revocation of dairy operations; hearings required; deficiencies to be corrected; and clear and present health hazard may result in immediate suspension.

Be it enacted by the Legislature of West Virginia:

That section five, article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-5. Regulations by state board of health as to milk and milk products.

1 The West Virginia board of health shall adopt regulations
2 to provide clean and safe milk and fresh milk products, and,
3 when promulgated, these regulations shall be the minimum
4 requirements to be enforced by local health authorities through-
5 out the state: *Provided*, That except in any case where the
6 milk or milk product involved creates, or appears to create, an
7 imminent hazard to the public health, or in any case of a will-
8 ful refusal to permit an authorized inspection, that any
9 regulations promulgated by the board of health shall provide
10 that prior to any suspension or revocation of a permit issued
11 to any dairy farm, milk plant, receiving station, transfer sta-
12 tion and distribution station, the holder of such permit shall be

13 served with a written notice to suspend or revoke such permit,
14 which notice shall specify with particularity the violations in
15 question and afford the holder reasonable opportunity to cor-
16 rect such violations: *Provided, however,* That the proposed
17 order to deny, suspend or revoke a permit shall not be
18 effective until notice in writing has been delivered to the holder
19 of such permit who shall have forty-eight hours therefrom in
20 which to make application to the county health officer for
21 a hearing thereon. The county health officer shall, within
22 seventy-two hours of receipt of such application, give a notice
23 in writing to the holder of such permit setting forth the
24 time and place of the hearing and proceed to a hearing to
25 ascertain the facts of such violation and upon evidence
26 presented at such hearing shall affirm, modify or rescind the
27 proposed order to suspend. A copy of such regulations shall
28 be furnished to the commissioner of agriculture for his guidance
29 in performing any duties with relation to milk and milk prod-
30 ucts imposed on him by law.

CHAPTER 55

(S. B. 387—By Mr. Darby)

[Passed March 5, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and four, article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections twelve, fourteen, fifteen, sixteen and seventeen, article eleven, chapter eighteen of said code, all relating to anatomical gifts; definitions; persons who may execute anatomical gift; certification of death; the West Virginia anatomical board and its powers, authority, duties, notices and requisition of unclaimed bodies, and bond; expense of delivery of body; rules and regulations governing the use, disposition and control of donated bodies and parts thereof; manner of executing anatomical gifts.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and four, article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections twelve, fourteen, fifteen, sixteen and seventeen, article eleven, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

18. Education.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-1. Definitions.

§16-19-2. Persons who may execute an anatomical gift.

§16-19-3. Persons who may become donees; purposes for which anatomical gifts may be made; compliance with rules and regulations of board.

§16-19-4. Manner of executing anatomical gifts.

§16-19-1. Definitions.

1 (a) "Bank or storage facility" means a facility licensed,
2 accredited, or approved under the laws of any state
3 for storage or distribution of human bodies or parts
4 thereof.

5 (b) "Certification of death" means a written pro-
6 nouncement of death by the attending physician. Such
7 certification shall be required before the attending phy-
8 sician shall allow removal of any bodily organs of the
9 decedent for transplant purposes.

10 (c) "Death" means that a person will be considered
11 dead if in the announced opinion of the attending phy-
12 sician, based on ordinary standards of medical practice,
13 the patient has experienced an irreversible cessation of
14 spontaneous respiratory and circulatory functions; or,
15 in the event that artificial means of support preclude
16 a determination that these functions have ceased, a
17 person will be considered dead if in the announced
18 opinion of a physician, based on ordinary standards of

19 medical practice, the patient has experienced an irrevers-
20 ible cessation of spontaneous brain functions.

21 Death will have occurred at the time when the relevant
22 functions ceased.

23 (d) "Decedent" means a deceased individual and in-
24 cludes a stillborn infant or fetus.

25 (e) "Donor" means an individual who makes a gift
26 of all or part of his body.

27 (f) "Hospital" means a hospital licensed, accredited,
28 or approved under the laws of any state; includes a
29 hospital operated by the United States government, a
30 state, or a subdivision thereof, although not required
31 to be licensed under state laws.

32 (g) "Part" means organs, tissues, eyes, bones, arteries,
33 blood, other fluids and any other portions of a human
34 body.

35 (h) "Person" means an individual, corporation, gov-
36 ernment or governmental subdivision or agency, busi-
37 ness trust, estate trust, partnership or association, or any
38 other legal entity.

39 (i) "Physician" or "surgeon" means a physician or
40 surgeon licensed or authorized to practice under the laws
41 of any state.

42 (j) "State" includes any state, district, common-
43 wealth, territory, insular possession, and any other area
44 subject to the legislative authority of the United States
45 of America.

§16-19-2. Persons who may execute an anatomical gift.

1 (a) Any individual of sound mind and eighteen years
2 of age or more may give all or any part of his body for
3 any purpose specified in section three of this article,
4 the gift to take effect upon certification of death.

5 (b) Any of the following persons, in order of priority
6 stated, when persons in prior classes are not available
7 at the time of certification of death, and in the absence
8 of actual notice of contrary indications by the decedent
9 or actual notice of opposition by a member of the same

10 or a prior class, may give all or any part of the
11 decedent's body for any purpose specified in section
12 three of this article:

13 (1) The spouse;

14 (2) An adult son or daughter;

15 (3) Either parent;

16 (4) An adult brother or sister;

17 (5) A guardian of the person of the decedent at the
18 time of the certification of his death;

19 (6) Any other person authorized or under obligation
20 to dispose of the body.

21 (c) If the donee has actual notice of contrary indi-
22 cations by the decedent or that a gift by a member of a
23 class is opposed by a member of the same or a prior
24 class, the donee shall not accept the gift. The persons
25 authorized by subsection (b) of this section may make
26 the gift after or immediately before certification of
27 death.

28 (d) A gift of all or part of a body authorizes any
29 examination necessary to assure medical acceptability
30 of the gift for the purposes intended.

31 (e) The rights of the donee created by the gift are
32 paramount to the rights of others except as provided
33 by section seven, subsection (d) of this article.

**§16-19-3. Persons who may become donees; purposes for which
anatomical gifts may be made; compliance with
rules and regulations of board.**

1 The following persons may become donees of gifts
2 of bodies or parts thereof for the purposes stated:

3 (1) The West Virginia anatomical board for the scien-
4 tific purposes of educational institutions for which it
5 may receive or requisition dead bodies; or

6 (2) Any hospital, surgeon or physician, for medical
7 or dental education, research, advancement of medical or
8 dental science, therapy or transplantation; or

9 (3) Any accredited medical or dental school, college or

10 university for education, research, advancement of medi-
11 cal or dental science or therapy; or

12 (4) Any person operating a bank or storage facility for
13 blood, arteries, eyes, pituitaries, or other human parts,
14 for use in medical or dental education, advancement of
15 medical or dental science, research, therapy or trans-
16 plantation to individuals; or

17 (5) Any specified individual for therapy or transplan-
18 tation needed by him.

19 The use, disposition and control of any such donated
20 bodies or parts thereof by any such donee shall be in
21 accordance with rules and regulations prescribed by the
22 West Virginia anatomical board.

§16-19-4. Manner of executing anatomical gifts.

1 (a) A gift of all or part of the body under subsection
2 (a), section two of this article may be made by will. The
3 gift becomes effective upon certification of death of the
4 testator without waiting for probate. If the will is not
5 probated, or if it is declared invalid for testamentary
6 purposes, the gift, to the extent that it has been acted
7 upon in good faith, is nevertheless valid and effective.

8 (b) A gift of all or part of the body under subsection
9 (a), section two of this article may also be made by
10 document other than a will. The gift becomes effective
11 upon certification of death of the donor. The document,
12 which may be a card designed to be carried on the person,
13 must be signed by the donor in the presence of two wit-
14 nesses who must sign the document in his presence. If the
15 donor cannot sign, the document may be signed for him
16 at his direction and in his presence in the presence of
17 two witnesses who must sign the document in his
18 presence. Delivery of the document of gift during the
19 donor's lifetime is not necessary to make the gift valid.

20 (c) The gift may be made to a specified donee or
21 without specifying a donee. If the latter, the West Vir-
22 ginia anatomical board will be considered to be the
23 donee unless it declines to accept the gift, or unless there

24 is urgent immediate need for a part of the body for
25 transplant or other purposes in which case the gift may
26 be accepted by the attending physician as donee upon
27 or following certification of death. In case the anatomical
28 board is considered the donee it shall be the duty of the
29 person who has charge or control of the body, if he or she
30 has knowledge of the gift, to give notice thereof to the
31 anatomical board within twenty-four hours after such
32 body comes under his or her control. Thereafter, he or she
33 shall hold the body subject to the order of the anatomical
34 board for at least twenty-four hours after the sending
35 of such notice. If the anatomical board makes a requisition
36 for the body within the twenty-four hour period,
37 it shall be delivered, pursuant to the order of the board,
38 to the board or its authorized agent for transportation
39 to West Virginia University or any other educational
40 institution which the board deems to be in bona fide
41 need thereof and able to adequately control, use and
42 dispose of the body. If the anatomical board shall not
43 so act within the twenty-four hour period, the gift may
44 be accepted by the attending physician as donee upon
45 or following certification of death. If the gift is made to a
46 specified donee who is not available at the time and place
47 of death, the attending physician upon or following certification
48 of death, in the absence of any expressed indication
49 that the donor desired otherwise, may accept the
50 gift as donee. The physician who becomes a donee under
51 this subsection shall not participate in the procedures for
52 removing or transplanting a part, except that this prohibition
53 shall not apply to the removing or transplanting of
54 an eye or eyes.

55 (d) Notwithstanding subsection (b), section seven of
56 this article, the donor may designate in his will, card
57 or other document of gift the surgeon or physician to
58 carry out the appropriate procedures, or in the case of
59 a gift of an eye or eyes, the surgeon or physician or
60 the technician properly trained in the surgical removal
61 of eyes to carry out the appropriate procedures. In the
62 event of the nonavailability of such designee, or in the
63 absence of a designation, the donee or other person

64 authorized to accept the gift may employ or authorize
65 for the purpose any surgeon or physician or in the case
66 of a gift of an eye or eyes, any surgeon or physician or
67 technician properly trained in the surgical removal of
68 eyes.

69 (e) Any gift by a person designated in subsection (b),
70 section two of this article shall be made by a document
71 signed by him or made by his telegraphic, recorded tele-
72 phonic, or other recorded message.

73 (f) No particular words shall be necessary for dona-
74 tion of all or part of a body, but the following words,
75 in substance, properly signed and witnessed, shall be
76 legally valid for donations made pursuant to subsection
77 (b) of this section:

78 "UNIFORM DONOR CARD
79 of

80
81 Print or type name of donor

82 In the hope that I may help others, I hereby make
83 this anatomical gift, if medically acceptable, to take effect
84 upon certification of my death. The words and marks
85 below indicate my desires.

86 I give: (a) _____ any needed organs or parts

87 (b) _____ only the following organs or
88 parts

89
90 Specify the organ(s) or part(s)

91 for the purposes of transplantation, therapy, medical re-
92 search or education;

93 (c) _____ my body for anatomical study
94 if needed.

95 Limitations or special wishes, if any: _____

96 Signed by the donor and the following two witnesses in
97 the presence of each other:

98
99 Signature of Donor _____ Date of Birth of Donor _____

100

101

Date Signed

City and State

102

103

Witness

Witness

104

105

This is a legal document under the Uniform Anatomical
Gift Act or similar laws."

CHAPTER 18. EDUCATION.

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

§18-11-12. Anatomical board.

§18-11-14. Notice of unclaimed body; requisition for body.

§18-11-15. Transportation of dead bodies.

§18-11-16. Expense of preservation, delivery, etc.

§18-11-17. Bond of anatomical board.

§18-11-12. Anatomical board.

1 The governor shall appoint one dean of a school of
2 medicine, one dean of a school of dentistry and two
3 chairmen of departments of anatomy of schools of medi-
4 cine, all of whom shall constitute a board to be known
5 as the "West Virginia Anatomical Board". No more
6 than one member of such board shall be from the same
7 school. The board shall be responsible for making requi-
8 sition for, receiving, and making disposition of the dead
9 human bodies for the scientific uses and purposes of
10 the West Virginia University schools of medicine,
11 dentistry, nursing and the similar uses and pur-
12 poses of other reputable educational institutions having
13 medical, osteopathy, dentistry or nursing schools. The
14 board shall have full power to establish rules and reg-
15 ulations for its own government, and for the requisition,
16 use, disposition and control of such bodies as may
17 come under its authority by way of gift, pursuant to
18 this article or pursuant to section four, article nineteen,
19 chapter sixteen of this code. The board shall have au-
20 thority to appoint such officers, employees, and agents
21 as may be necessary to carry out the purposes for which
22 the board is organized. It shall keep a full and com-
23 plete record of its transactions, showing, among other
24 things, every dead human body coming under its au-
25 thority, giving name, sex, age, date of death, place from

26 which received, when and from whom received, which
27 record shall be open at all times to the inspection of
28 the attorney general and any prosecuting attorney in
29 the state.

§18-11-14. Notice of unclaimed body; requisition for body.

1 It shall be the duty of any person who has charge or
2 control of any unclaimed body, subject to requisition by
3 the anatomical board, to give notice to the board of
4 that fact by telephone or telegraph within twenty-four
5 hours after such body comes under his control. There-
6 after he shall hold the body subject to the order of the
7 anatomical board for at least twenty-four hours after
8 the sending of such notice. If the anatomical board makes
9 requisition for the body within the twenty-four hour
10 period, it shall be delivered, pursuant to the order of the
11 board, to the board or its authorized agent for trans-
12 portation to West Virginia University or to any other
13 educational institution described in section twelve of
14 this article which the board deems to be in bona fide
15 need thereof and able to adequately control, use and
16 dispose of the body.

§18-11-15. Transportation of dead bodies.

1 The anatomical board shall make suitable arrange-
2 ments for the transportation of any body, or part or
3 parts thereof, which may come under its authority to
4 West Virginia University or any other educational in-
5 stitution as described in the preceding section.

§18-11-16. Expense of preservation, delivery, etc.

1 All expenses incurred in connection with the preser-
2 vation, delivery and transportation of any such body
3 delivered pursuant to the order of the anatomical board
4 shall be paid by the educational institution receiving
5 the body.

§18-11-17. Bond of anatomical board.

1 No dead body shall be received or requisitioned by
2 the anatomical board until the members of the board
3 have filed a bond with the clerk of the circuit court of

4 Monongalia County in a penalty of one thousand dollars,
5 with good security, signed by a responsible person or
6 persons, or by some surety company authorized to do
7 business in this state, or have proved to such clerk that
8 they are covered by a suitable bond in at least that
9 amount, conditioned for the faithful performance of their
10 duties.

CHAPTER 56

(S. B. 96—By Mr. Steptoe)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five, relating to detection of tuberculosis, high blood pressure and diabetes; legislative findings; establishing a program for early detection of tuberculosis and mobile x-ray facilities to be used in select areas of the state; reporting cases of tuberculosis and penalties for noncompliance; creating a program for early detection of high blood pressure and diabetes; mobile testing facilities.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-five, to read as follows:

ARTICLE 25. DETECTION OF TUBERCULOSIS, HIGH BLOOD PRESSURE AND DIABETES.

§16-25-1. Legislative findings.

§16-25-2. Program for early detection of tuberculosis; mobile x-ray facilities used in select areas of the state.

§16-25-3. Reporting cases of tuberculosis; penalty for noncompliance.

§16-25-4. Program for detection of high blood pressure and diabetes; mobile testing facilities.

§16-25-1. Legislative findings.

1 The Legislature finds that tuberculosis, diabetes and
2 the condition of high blood pressure are diseases which
3 are latent in nature and have symptoms and effects which
4 are not easily recognizable by the members of the public,
5 while at the same time these diseases and conditions
6 are very serious and often fatal if not diagnosed and
7 treated in their early stages. The Legislature also finds
8 that if mobile laboratory testing were to be made readily
9 available to the public, the hazards created by such
10 diseases to the health of those suffering therefrom may
11 be lessened or prevented by early detection or treatment.
12 The legislative purpose of this article is to provide for
13 adequate testing facilities for the detection of such
14 diseases.

§16-25-2. Program for early detection of tuberculosis; mobile x-ray facilities used in select areas of the state.

1 The state department of health may establish and
2 implement a program designed to detect tuberculosis
3 in its early stages in members of the public and may
4 promulgate reasonable rules and regulations necessary
5 to carry out such a program. The department of health
6 is to establish and maintain mobile x-ray facilities for
7 use in detection of tuberculosis to be used in select areas
8 in the state where the director finds that tuberculosis is
9 most likely to be present. Such select areas shall be de-
10 termined by the director at his discretion.

§16-25-3. Reporting cases of tuberculosis; penalty for noncompliance.

1 Any physician, nurse, physician's assistant or any other
2 person who detects or diagnoses a case of tuberculosis
3 shall report within seventy-two hours excluding Sundays
4 and holidays such to the state department of health. Any
5 such person reporting such case shall also obtain from
6 the person afflicted with tuberculosis, the name, age,
7 present street address and the name and address of such
8 person's nearest living relative.

9 Any person who violates the provisions of this section
10 shall be guilty of a misdemeanor, and, upon conviction
11 thereof, shall be fined not less than twenty dollars nor
12 more than one hundred dollars.

§16-25-4. Program for detection of high blood pressure and diabetes; mobile testing facilities.

1 The state department of health is hereby authorized
2 to establish and implement a program designed to detect
3 high blood pressure and diabetes in members of the
4 public and may promulgate reasonable rules and regula-
5 tions necessary to carry out such a program. The director
6 is to establish and maintain adequate testing facilities for
7 the detection of such diseases at its state hygienic labora-
8 tories and shall establish mobile testing facilities for
9 the detection of such diseases in members of the public
10 as the director finds is necessary to carry out the legisla-
11 tive purpose as is defined in section one of this article.

CHAPTER 57

(S. B. 206—By Mr. Harman and Mr. Hinkle)

[Passed February 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legal holidays; and redesignating the thirtieth day of May, the traditional date, for observing Memorial Day.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LEGAL HOLIDAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.

1 The following days shall be regarded, treated and

2 observed as legal holidays, viz: The first day of January,
3 commonly called "New Year's Day"; the twelfth day of
4 February, commonly called "Lincoln's Birthday"; the
5 third Monday of February, commonly called "Washing-
6 ton's Birthday"; the thirtieth day of May, commonly
7 called "Memorial Day"; the twentieth day of June, com-
8 monly called "West Virginia Day"; the fourth day of July,
9 commonly called "Independence Day"; the first Monday
10 of September, commonly called "Labor Day"; the second
11 Monday of October, commonly called "Columbus Day";
12 the eleventh day of November, hereafter referred to as
13 "Veterans Day"; the fourth Thursday of November, com-
14 monly called "Thanksgiving Day"; the twenty-fifth day
15 of December, commonly called "Christmas Day"; any
16 national, state or other election day throughout the district
17 or municipality wherein held; and all days which may be
18 appointed or recommended by the governor of this state,
19 or the president of the United States, as days of thanks-
20 giving, or for the general cessation of business; and when
21 any of said days or dates falls on Sunday, then the suc-
22 ceeding Monday shall be regarded, treated and observed
23 as such legal holiday. When the return day of any sum-
24 mons or other court proceeding or any notice or time
25 fixed for holding any court or doing any official act shall
26 fall on any of said holidays, the ensuing day which is not
27 a Saturday, Sunday or legal holiday shall be taken as
28 meant and intended: *Provided*, That nothing herein con-
29 tained shall increase nor diminish the legal school holidays
30 provided for in section two, article five, chapter eighteen-a
31 of this code.

CHAPTER 58

(Com. Sub. for H. B. 1457—By Mr. Seibert)

[Passed February 28, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a,

relating to the West Virginia housing development fund; and providing that loans in a principal amount of more than one hundred thousand dollars, and additions to and refinancings of such loans, made by the housing development fund shall not be subject to any law limiting interest rates or imposing forfeiture, penalties or other loss or liability because of interest rate charged.

Be it enacted by the Legislature of West Virginia:

That article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section six-a, to read as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-6a. Certain loans exempt from laws limiting interest rates or providing forfeitures, etc.

1 Notwithstanding any other provision to the contrary, no
2 law limiting interest rates or providing for forfeiture, penalty
3 or other loss or liability because of rate of interest charged
4 shall apply to any loan in a principal amount of more than
5 one hundred thousand dollars on loans made by the housing
6 development fund in the furtherance of its corporate purposes
7 or to any addition to or refinancing of a loan in the original
8 principal amount of more than one hundred thousand dollars,
9 made by the housing development fund for such purposes.

CHAPTER 59

(S. B. 494—By Mr. Brotherton, Mr. President)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the statutory mortgage lien and other security for industrial development revenue bonds and commercial development revenue bonds.

Be it enacted by the Legislature of West Virginia:

That section eight, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-8. Security for bonds.

1 Unless the governmental body shall otherwise deter-
2 mine in the resolution authorizing the issuance of the
3 revenue bonds under the authority of this article, there is
4 hereby created a statutory mortgage lien upon all real
5 estate, buildings, structures, improvements and personal
6 property included as a part of an industrial project or
7 commercial project which was acquired, purchased, con-
8 structed, or built or improved, or financed with the pro-
9 ceeds of said bonds, for the purpose of securing the
10 principal of said bonds and the interest thereon. The
11 principal of and interest on any bonds issued under the
12 authority of this article shall be secured by a pledge of
13 the income and revenues derived from the lease, sale,
14 financing or other disposition of the industrial project or
15 commercial project, by the governmental body issuing
16 such bonds. In the discretion and at the option of the
17 county commission or municipality, such revenue bonds
18 may also be secured by a trust indenture by and between
19 the county commission or the municipality and a corporate
20 trustee, which may be a trust company or bank having
21 trust powers, within or without the state of West Virginia.
22 The governing body may authorize the issuance of such
23 revenue bonds by resolution. The resolution authorizing
24 the revenue bonds and fixing the details thereof may
25 provide that such trust indenture may contain such pro-
26 visions for the protection and enforcing the rights and
27 remedies of the bondholders as may be reasonable and
28 proper, not in violation of law, including covenants setting
29 forth the duties of the county commission or the munici-
30 pality in relation to the construction, acquisition or financ-

31 ing of an industrial project or commercial project, or part
32 thereof, or an addition thereto, and the improvement, re-
33 pair, maintenance and insurance thereof, and for the cus-
34 tody, safeguarding and application of all moneys, and may
35 provide that the industrial project or commercial project
36 shall be constructed and paid for under the supervision
37 and approval of the consulting engineers or architects
38 employed and designated by the governing body and
39 satisfactory to the purchasers of the bonds, their succes-
40 sors, assigns or nominees, and the entity which leases,
41 purchases or will own the project or either thereof, who
42 may require the security given by any contractor or any
43 depository of the proceeds of the bonds or the revenues
44 received from the lease, sale, financing or other disposition
45 of the industrial project or commercial project be satis-
46 factory to such purchasers, their successors, assigns or
47 nominees, or be satisfactory to the entity which leases,
48 purchases or will own the industrial project or commer-
49 cial project. Such indenture may set forth the rights and
50 remedies of the bondholders, the county or municipality
51 or such trustee, and said indenture may provide for accel-
52 erating the maturity of the revenue bonds, at the option of
53 the bondholders or the governmental body issuing the
54 same, upon default in the payment of rentals, or amounts
55 due from the entity which leases, purchases, or will own
56 the project or for other cause. The governing body may
57 also provide by resolution and in such trust indenture for
58 the payment of the proceeds of the sale of the bonds and
59 the revenues from the industrial project or commercial
60 project to such depository as it may determine, for the
61 custody and investment thereof and for the method of
62 distribution thereof, with such safeguards and restrictions
63 as it may determine to be necessary or advisable for the
64 protection thereof and upon the filing of a certified copy
65 of such resolution or of the indenture for record in the
66 office of the clerk of the county commission of the county
67 in which an industrial project or commercial project is
68 located, the same shall have the same effect, as to notice,
69 as the recordation of a deed of trust or other recordable
70 instrument.

71 In lieu of the indenture provided for hereinabove the
72 principal of and interest on said bonds may be secured by
73 a mortgage or deed of trust covering all or any part of the
74 industrial project or commercial project from which the
75 revenues so pledged may be derived, and the same may
76 be secured by an assignment of the lease on or sale or
77 financing agreement with respect to said industrial project
78 or commercial project and by assignment or pledge of the
79 income received by virtue of said lease, sale or financing
80 agreement. The proceedings under which such bonds are
81 authorized to be issued, when secured by a mortgage or
82 deed of trust, may contain the same terms, conditions and
83 provisions provided for herein when an indenture is en-
84 tered into between the governing body and a trustee and
85 any such mortgage or deed of trust may contain any
86 agreements and provisions customarily contained in in-
87 struments securing bonds, including, without limiting the
88 generality of the foregoing, provisions respecting the
89 fixing and collection of rental, purchase or other payments
90 for any industrial project or commercial project covered
91 by such proceedings or mortgage, the terms to be incor-
92 porated in the lease, sale or financing agreement with re-
93 spect to such industrial project or commercial project, the
94 improvement, repair, maintenance and insurance of such
95 industrial project or commercial project, the creation and
96 maintenance of special funds from the revenues received
97 from the lease, sale or financing of such industrial project
98 or commercial project and the rights and remedies avail-
99 able in event of default to the bondholders, the govern-
100 mental body, or to the trustee under an agreement, inden-
101 ture, mortgage or deed of trust, all as the governing body
102 shall deem advisable and as shall not be in conflict with
103 the provisions of this article or any existing law: *Provided,*
104 That in making any such agreements or provisions a coun-
105 ty or municipality shall not have the power to obligate
106 itself by indenture, ordinance, resolution, mortgage or
107 deed of trust, except with respect to the industrial project
108 or commercial project and the application of the revenues
109 therefrom, and shall not have the power to incur a pecu-
110 niary liability or a charge upon its general credit or

111 against its taxing powers. The proceedings authorizing any
112 bonds hereunder and any indenture, mortgage or deed of
113 trust securing such bonds may provide that, in the event
114 of default in payment of the principal of or the interest
115 on such bonds or in the performance of any agreement
116 contained in such proceedings, indenture, mortgage or
117 deed of trust, such payment and performance may be
118 enforced by the appointment of a receiver in equity with
119 power to charge and collect rents or other amounts and to
120 apply the revenues from the industrial project or commercial project in accordance with such proceedings or the
121 provisions of such agreement, indenture, mortgage or
122 deed of trust. Any such agreement, indenture, mortgage or
123 deed of trust may provide also that in the event of default
124 in such payment or the violation of any agreement contained in the mortgage or deed of trust, the agreement,
125 indenture, mortgage or deed of trust may be foreclosed
126 either by sale at public outcry or by proceedings in
127 equity and may provide that the holder or holders of any
128 of the bonds secured thereby may become the purchaser
129 at any foreclosure sale, if the highest bidder therefor. No
130 breach of any such agreement, indenture, mortgage or
131 deed of trust shall impose any pecuniary liability upon a
132 county or municipality or any charge upon its general
133 credit or against its taxing powers.
134
135

CHAPTER 60

(H. B. 1227—By Mr. Allen)

[Passed February 27, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-three, relating to requiring insurance companies to use the most recent publication of the "official used car guide" of the national automobile dealers association as a guide for setting the minimum

value of a motor vehicle involved in a claim arising from an accident.

Be it enacted by the Legislature of West Virginia:

That article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-three, to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-33. Value of motor vehicle involved in claim.

- 1 Insurance companies doing business in this state shall use
- 2 the most recent publication of the "official used car guide"
- 3 published by the national automobile dealers association as a
- 4 guide for setting the minimum value of any motor vehicle
- 5 involved in a claim settlement arising from a motor vehicle
- 6 accident.

CHAPTER 61

(H. B. 1337—By Mr. Shiflet and Mr. Shingleton)

[Passed February 25, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; rates and rating organizations; and providing for the establishment of at least seven territorial rate areas within the state as a basis for setting rates.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-3. Rate making.

§33-20-4. Rate filings.

§33-20-3. Rate making.

1 All rates shall be made in accordance with the following
2 provisions:

3 (a) Due consideration shall be given to past and prospec-
4 tive loss experience within and outside this state, to catastrophe
5 hazards, if any, to a reasonable margin for underwriting profit
6 and contingencies, to dividends, savings or unabsorbed pre-
7 mium deposits allowed or returned by insurers to their
8 policyholders, members or subscribers, to past and prospective
9 expenses both countrywide and those specially applicable to
10 this state, and to all other relevant factors within and outside
11 this state.

12 (b) Rates shall not be excessive, inadequate or unfairly
13 discriminatory.

14 (c) Rates for casualty and surety insurance to which this
15 article applies shall also be subject to the following provisions:

16 (1) The systems of expense provisions included in the
17 rates for use by any insurer or group of insurers may differ
18 from those of other insurers or groups of insurers to re-
19 flect the requirements of the operating methods of any
20 such insurer or group with respect to any kind of insurance,
21 or with respect to any subdivision or combination thereof
22 for which subdivision or combination separate expense pro-
23 visions are applicable.

24 (2) Risks shall be grouped by classifications and by
25 territorial areas for the establishment of rates and minimum
26 premiums. Classification of rates shall be modified to produce
27 rates for individual risks in a territorial area in accordance
28 with rating plans which establish standards for measuring
29 variations in hazards or expense provisions, or both. Such
30 standards may measure any differences among risks that can
31 be demonstrated to have a probable effect upon losses or
32 expenses: *Provided*, That such standards shall include the
33 establishment of at least seven territorial rate areas within the
34 state: *Provided further*, That such territorial rate established
35 by any insurer or group of insurers may differ from those of
36 other insurers or group of insurers.

37 (3) Due consideration shall be given to such factors as ex-
38 pense, management, individual experience, underwriting judg-
39 ment, degree or nature of hazard or any other reasonable con-
40 siderations, provided such factors apply to all risks under the
41 same or substantially the same circumstances or conditions.

42 (d) Rates for fire and marine insurance to which this article
43 applies shall also be subject to the following provisions:

44 (1) Manual, minimum, class rates, rating schedules or
45 rating plans shall be made and adopted, except in the case
46 of specific inland marine rates on risks specially rated.

47 (2) Due consideration shall be given to the conflagration
48 hazard, and in the case of fire insurance rates consideration
49 shall be given to the experience of the fire insurance business
50 during a period of not less than the most recent five-year
51 period for which such experience is available.

52 (e) Except to the extent necessary to meet the provisions
53 of subdivisions (b) and (c) of this section, uniformity among
54 insurers in any matters within the scope of this section is
55 neither required nor prohibited.

56 (f) Rates made in accordance with this section may be
57 used subject to the provisions of this article.

§33-20-4. Rate filings.

1 (a) (1) Every insurer shall file with the commissioner
2 every manual of classifications, territorial rate areas established
3 pursuant to subdivision (c) (2), section three of this article,
4 rules and rates, every rating plan and every modification of
5 any of the foregoing which it proposes to use for casualty in-
6 surance to which this article applies.

7 (2) Every insurer shall file with the commissioner, except
8 as to inland marine risks which by general custom of the
9 business are not written according to manual rates or rating
10 plans, every manual, minimum, class rate, rating schedule or
11 rating plan and every other rating rule and every modification
12 of any of the foregoing which it proposes to use for fire and
13 marine insurance to which this article applies. Specific inland
14 marine rates on risks specially rated, made by a rating organi-
15 zation, shall be filed with the commissioner.

16 (b) Every such filing shall state the proposed effective date
17 thereof and shall indicate the character and extent of the cover-
18 age contemplated. When a filing is not accompanied by the in-
19 formation upon which the insurer supports such filing, and the
20 commissioner does not have sufficient information to determine
21 whether such filing meets the requirements of this article, he
22 shall require such insurer to furnish the information upon which
23 it supports such filing and in such event the waiting period shall
24 commence as of the date such information is furnished. The in-
25 formation furnished in support of a filing may include (1) the
26 experience or judgment of the insurer or rating organization
27 making the filing, (2) the experience or judgment of the insurer
28 or rating organization in the territorial rate areas established by
29 subdivision (c) (2), section three of this article, (3) its inter-
30 pretation of any statistical data it relies upon, (4) the experi-
31 ence of other insurers or rating organizations or (5) any other
32 relevant factors. A filing and any supporting information shall
33 be open to public inspection as soon as the filing is received
34 by the commissioner. Any interested party may file a brief
35 with the commissioner supporting his position concerning the
36 filing. Any person or organization may file with the com-
37 missioner a signed statement declaring and supporting his or
38 its position concerning the filing. Upon receipt of such state-
39 ment prior to the effective date of the filing, the commissioner
40 shall mail or deliver a copy of such statement to the filer, which
41 may file such reply as it may desire to make. This section
42 shall not be applicable to any memorandum or statement of
43 any kind by any employee of the commissioner.

44 (c) An insurer may satisfy its obligation to make such
45 filing by becoming a member of, or a subscriber to, a
46 licensed rating organization which makes such filings, and
47 by authorizing the commissioner to accept such filings on
48 its behalf: *Provided*, That nothing contained in this article
49 shall be construed as requiring any insurer to become a
50 member of or a subscriber to any rating organization.

51 (d) The commissioner shall review filings as soon as
52 reasonably possible after they have been made in order to
53 determine whether they meet the requirements of this article.

54 (e) Subject to the exceptions specified in subsections (f)

55 and (g) of this section, each filing shall be on file for a
56 waiting period of thirty days before it becomes effective,
57 which period may be extended by the commissioner for an
58 additional period not to exceed fifteen days if he gives written
59 notice within such waiting period to the insurer or rating
60 organization which made the filing that he needs such addi-
61 tional time for the consideration of such filing. Upon written
62 application by such insurer or rating organization, the com-
63 missioner may authorize a filing which he has reviewed to
64 become effective before the expiration of the waiting period
65 or any extension thereof. A filing shall be deemed to meet
66 the requirements of this article unless disapproved by the
67 commissioner within the waiting period or any extension
68 thereof.

69 (f) Any special filing with respect to a surety bond
70 required by law or by court or executive order or by order,
71 rule or regulation of a public body, not covered by a
72 previous filing, shall become effective when filed and shall
73 be deemed to meet the requirements of this article until
74 such time as the commissioner reviews the filing and so long
75 thereafter as the filing remains in effect.

76 (g) Specific inland marine rates on risks specially rated
77 by a rating organization shall become effective when filed
78 and shall be deemed to meet the requirements of this article
79 until such time as the commissioner reviews the filing and so
80 long thereafter as the filing remains in effect.

81 (h) Under such rules and regulations as he shall adopt
82 the commissioner may, by written order, suspend or modify
83 the requirement of filing as to any kind of insurance, sub-
84 division or combination thereof, or as to classes of risks,
85 the rates for which cannot practicably be filed before they
86 are used. Such orders, rules and regulations shall be made
87 known to insurers and rating organizations affected thereby.
88 The commissioner may make such examination as he may
89 deem advisable to ascertain whether any rates affected by such
90 order meet the standards set forth in subdivision (b), section
91 three of this article.

92 (i) Upon the written application of the insured, stating
93 his reasons therefor, filed with and approved by the com-

94 missioner, a rate in excess of that provided by a filing other-
95 wise applicable may be used on any specific risks.

96 (j) No insurer shall make or issue a contract or policy
97 except in accordance with the filings which are in effect for
98 said insurer as provided in this article or in accordance with
99 subsection (h) or (i) of this section. This subsection shall not
100 apply to contracts or policies for inland marine risks as to
101 which filings are not required.

CHAPTER 62

(H. B. 1139—By Mr. Morasco)

[Passed March 4, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nineteen and thirty-two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to references for nonforfeiture benefits and cash surrender values of fraternal benefit society certificates.

Be it enacted by the Legislature of West Virginia:

That sections nineteen and thirty-two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-19. Nonforfeiture benefits, cash surrender values, loans and options.

§33-23-32. Reports and synopses of annual statements; valuations.

§33-23-19. Nonforfeiture benefits, cash surrender values, loans and options.

1 (a) A society may grant paid-up nonforfeiture benefits,
2 cash surrender values, certificate loans and such other op-
3 tions as its laws may permit. As to certificates issued
4 on and after the effective date of this article, a society shall
5 grant at least one paid-up nonforfeiture benefit.

6 (b) In the case of certificates other than those for which

7 reserves are computed on the Commissioners 1941 Standard
8 Ordinary Mortality Table or the 1941 Standard Industrial
9 Table, or any more recent table made applicable to life insur-
10 ance companies and duly approved by the commissioner, the
11 value of every paid-up nonforfeiture benefit and the amount of
12 any cash surrender value, loan or other option granted shall
13 not be less than the excess, if any, of (1) over (2) as follows:

14 (1) The reserve under the certificate determined on the ba-
15 sis specified in the certificate; and

16 (2) The sum of any indebtedness to the society on the certif-
17 icate, including interest due and accrued, and a surrender
18 charge equal to two and one-half percent of the face amount
19 of the certificate, which, in the case of insurance on the lives
20 of children, shall be the ultimate face amount of the certifi-
21 cate, if death benefits provided therein are graded.

22 (c) However, in the case of certificates issued on a sub-
23 standard basis or in the case of certificates, the reserves for
24 which are computed upon the American Men Ultimate Table
25 of Mortality, the term of any extended insurance benefit
26 granted including accompanying pure endowment, if any, may
27 be computed upon the rates of mortality not greater than one
28 hundred thirty percent of those shown by the mortality table
29 specified in the certificate for the computation of the reserve.

30 (d) In the case of certificates for which reserves are com-
31 puted on the Commissioners 1941 Standard Ordinary Mor-
32 tality Table or the 1941 Standard Industrial Table, or any,
33 more recent table made applicable to life insurance companies
34 and duly approved by the commissioner, every paid-up non-
35 forfeiture benefit and the amount of any cash surrender value,
36 loan or other option granted shall not be less than the
37 corresponding amount ascertained in accordance with the
38 provisions of the laws of this state applicable to life insurance
39 companies issuing policies containing like insurance benefits
40 based upon such tables.

§33-23-32. Reports and synopses of annual statements; valuations.

1 In addition to the annual statement required by section
2 fourteen, article four of this chapter, reports shall be filed

3 and synopses of annual statements shall be published in
4 accordance with the provisions of this section as follows:

5 (a) A synopsis of its annual statement providing an ex-
6 planation of the facts concerning the condition of the society
7 thereby disclosed shall be printed and mailed to each benefit
8 member of the society not later than the first day of June
9 of each year, or, in lieu thereof, such synopsis may be published
10 in the society's official publication.

11 (b) As a part of the annual statement required of each
12 society, it shall, on or before the first day of March, file
13 with the commissioner a valuation of its certificates in
14 force on December thirty-first last preceding: *Provided*, That
15 the commissioner may, in his discretion for cause shown, ex-
16 tend the time for filing such valuation for not more than two
17 calendar months. Such report of valuation shall show, as
18 reserve liabilities, the differences between the present mid-
19 year value of the promised benefits provided in the certificates
20 of such society in force and the present midyear value of
21 the future net premiums as the same are in practice actually
22 collected, not including therein any value for the right to make
23 extra assessments and not including any amount by which the
24 present midyear value of future net premiums exceeds the
25 present midyear value of promised benefits on individual
26 certificates. At the option of any society, in lieu of the above,
27 the valuation may show the net tabular value. Such net
28 tabular value as to certificates issued prior to one year after
29 the effective date of this article shall be determined in ac-
30 cordance with the provisions of law applicable prior to the
31 effective date of this article and as to certificates issued on
32 or after one year from the effective date of this article shall
33 not be less than the reserves determined according to the
34 commissioner's reserve valuation method as hereinafter defined.
35 If the premium charged is less than the tabular net premium
36 according to the basis of valuation used, an additional reserve
37 equal to the present value of the deficiency in such premiums
38 shall be set up and maintained as a liability. The reserve lia-
39 bilities shall be properly adjusted in the event that the midyear
40 or tabular values are not appropriate.

41 (c) Reserves according to the commissioner's reserve val-

42 uation method for the life insurance and endowment benefits
43 of certificates providing for a uniform amount of insurance
44 and requiring the payment of uniform premiums shall be the
45 excess, if any, of the present value, at the date of valuation,
46 of such future guaranteed benefits provided for by such cer-
47 tificates, over the then present value of any future modified net
48 premiums therefor. The modified net premiums for any such
49 certificate shall be such uniform percentage of the respective
50 contract premiums for such benefits that the present value, at
51 the date of issue of the certificate, of all such modified net
52 premiums shall be equal to the sum of the then present value
53 of such benefits provided for by the certificate and the excess
54 of (1) over (2), as follows:

55 (1) A net level premium equal to the present value, at
56 the date of issue, of such benefits provided for after the
57 first certificate year, divided by the present value, at the
58 date of issue, of an annuity of one per annum payable on the
59 first and each subsequent anniversary of such certificate on
60 which a premium falls due: *Provided, however,* That such net
61 level annual premium shall not exceed the net level annual
62 premium on the nineteen-year premium whole life plan for
63 insurance of the same amount at an age one year higher than
64 the age at issue of such certificate; and

65 (2) A net one-year term premium for such benefits pro-
66 vided for in the first certificate year.

67 (d) Reserves according to the commissioner's reserve valu-
68 ation method for (1) life insurance benefits for varying
69 amounts of benefits or requiring the payment of varying
70 premiums, (2) annuity and pure endowment benefits, (3)
71 disability and accidental death benefits in all certificates and
72 contracts, and (4) all other benefits except life insurance and
73 endowment benefits, shall be calculated by a method con-
74 sistent with the principles of subdivision (c) of this section.

75 (e) The present value of deferred payments due under
76 incurred claims or matured certificates shall be deemed a
77 liability of the society and shall be computed upon mortality
78 and interest standards prescribed in the following subdivision.

79 (f) Such valuation and underlying data shall be certified

80 by a competent actuary or, at the expense of the society,
81 verified by the actuary of the department of insurance of the
82 state of domicile of the society.

83 (g) The minimum standards of valuation for certificates
84 issued prior to one year from the effective date of this article
85 shall be those provided by the law applicable immediately prior
86 to the effective date of this article but not lower than the
87 standards used in the calculating of rates for such certificates.

88 (h) The minimum standard of valuation for certificates is-
89 sued after one year from the effective date of this article shall
90 be three and one-half percent interest and the following tables:

91 (1) For certificates of life insurance—American Men Ulti-
92 mate Table of Mortality, with Bowerman's or Davis' Extension
93 thereof or with the consent of the commissioner, the Commis-
94 sioners 1941 Standard Ordinary Mortality Table or the Com-
95 missioners 1941 Standard Industrial Table of Mortality;

96 (2) For annuity certificates, including life annuities pro-
97 vided or available under optional modes of settlement in such
98 certificates—the 1937 Standard Annuity Table;

99 (3) For disability benefits issued in connection with life
100 benefit certificates—Hunter's Disability Table, which for
101 active lives shall be combined with a mortality table permitted
102 for calculating the reserves on life insurance certificates, ex-
103 cept that the table known as Class III Disability Table (1926),
104 modified to conform to the contractual waiting period, shall
105 be used in computing reserves for disability benefits under a
106 contract which presumes that total disability shall be con-
107 sidered to be permanent after a specified period;

108 (4) For accidental death benefits issued in connection with
109 life benefit certificates—the Inter-Company Double Indem-
110 nity Mortality Table combined with a mortality table permitted
111 for calculating the reserves for life insurance certificates; and

112 (5) For noncancellable accident and sickness benefits—
113 the Class III Disability Table (1926) with conference modifica-
114 tions or, with the consent of the commissioner, tables based
115 upon the society's own experience: *Provided*, That any society
116 may value its certificates in accordance with valuation stan-

117 dards authorized by the laws of this state for the valuation
118 of policies issued by life insurance companies.

119 (i) The commissioner may, in his discretion, accept other
120 standards for valuation if he finds that the reserves produced
121 thereby will not be less in the aggregate than reserves com-
122 puted in accordance with the minimum valuation standard
123 herein prescribed. The commissioner may, in his discretion,
124 vary the standards of mortality applicable to all certificates
125 of insurance on substandard lives or other extra hazardous
126 lives by any society authorized to do business in this state.
127 Whenever the mortality experience under all certificates valued
128 on the same mortality table is in excess of the expected mor-
129 tality according to such table for a period of three consecutive
130 years, the commissioner may require additional reserves when
131 deemed necessary in his judgment on account of such certifi-
132 cates.

133 (j) Any society, with the consent of the insurance super-
134 visory official of the state of domicile of the society and under
135 such conditions, if any, which he may impose, may establish
136 and maintain reserves on its certificates in excess of the reserves
137 required thereunder, but the contractual rights of any insured
138 member shall not be affected thereby.

CHAPTER 63

(H. B. 819—By Mr. Speaker, Mr. McManus)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising the maximum death benefit allowable for domestic societies or associations of a purely religious, charitable or benevolent description to exempt them from the provisions of article twenty-three of chapter thirty-three of the code.

Be it enacted by the Legislature of West Virginia:

That section thirty-four, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-34. Exemption of certain societies.

1 (a) Nothing contained in this article shall be so con-
2 strued as to affect or apply to:

3 (1) Grand or subordinate lodges of societies, orders or asso-
4 ciations now doing business in this state which provide bene-
5 fits exclusively through local or subordinate lodges;

6 (2) Orders, societies or associations which admit to mem-
7 bership only persons engaged in one or more crafts or hazard-
8 ous occupations, in the same or similar lines of business in-
9 suring only their own members, their families and descen-
10 dants of members and the ladies' societies or ladies' auxiliaries
11 to such orders, societies or associations;

12 (3) Domestic societies which limit their membership to em-
13 ployees of a particular city or town, designated firm, business
14 house or corporation which provide for a death benefit of not
15 more than four hundred dollars or disability benefits of not
16 more than three hundred fifty dollars to any person in any
17 one year, or both; or

18 (4) Domestic societies or associations of a purely religious,
19 charitable or benevolent description, which provide for a
20 death benefit of not more than one thousand dollars or for
21 disability benefits of not more than three hundred fifty dollars
22 to any one person in any one year, or both.

23 (b) Any such society or association described in subdivision
24 (3) or (4), subsection (a) of this section which provides for
25 death or disability benefits for which benefit certificates are
26 issued, and any such society or association included in sub-
27 division (4) which has more than one thousand members, shall
28 not be exempted from the provisions of this article but shall
29 comply with all requirements thereof.

30 (c) No society which, by the provisions of this section, is

31 exempt from the requirements of this article, except any
32 society described in subdivision (2), subsection (a) of this
33 section, shall give or allow, or promise to give or allow to any
34 person any compensation for procuring new members.

35 (d) Every society which provides for benefits in case of
36 death or disability resulting solely from accident, and which
37 does not obligate itself to pay natural death or sick benefits
38 shall have all of the privileges and be subject to all the appli-
39 cable provisions and regulations of this article except that the
40 provisions thereof relating to medical examination, valuations
41 of benefit certificates, and incontestability, shall not apply to
42 such society.

43 (e) The commissioner may require from any society or asso-
44 ciation, by examination or otherwise, such information as will
45 enable him to determine whether such society or association
46 is exempt from the provisions of this article.

47 (f) Societies, exempted under the provisions of this section,
48 shall also be exempt from all other provisions of this chapter.

CHAPTER 64

(Com. Sub. for H. B. 1307—By Mr. Kopp)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article five-c; chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum wages and maximum hours; and overtime compensation.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-2. Minimum wages.

§21-5C-3. Maximum hours; overtime compensation.

§21-5C-2. Minimum wages.

1 On and after the first day of July, one thousand nine
2 hundred seventy-six, every employer shall pay to each of his
3 employees wages at a rate not less than two dollars and twenty
4 cents per hour.

§21-5C-3. Maximum hours; overtime compensation.

1 (a) On and after the first day of July, one thousand nine
2 hundred seventy-six, no employer shall employ any of his
3 employees for a workweek longer than forty-two hours, unless
4 such employee receives compensation for his employment in
5 excess of the hours above specified at a rate of not less than
6 one and one-half times the regular rate at which he is em-
7 ployed.

8 (b) As used in this section the "regular rate" at which
9 an employee is employed shall be deemed to include all
10 remuneration for employment paid to, or on behalf of, the
11 employee, but shall not be deemed to include:

12 (1) Sums paid as gifts; payments in the nature of gifts
13 made at Christmas time or on other special occasions, as a
14 reward for service, the amounts of which are not measured by
15 or dependent on hours worked, production, or efficiency;

16 (2) Payments made for occasional periods when no work
17 is performed due to vacation, holiday, illness, failure of
18 the employer to provide sufficient work, or other similar
19 cause; reasonable payments for traveling expenses, or other
20 expenses, incurred by an employee in the furtherance of his
21 employer's interests and properly reimbursable by the em-
22 ployer, and other similar payments to an employee which
23 are not made as compensation for his hours of employment;

24 (3) Sums paid in recognition of services performed during
25 a given period if either, (a) both the fact that payment
26 is to be made and the amount of the payment are deter-
27 mined at the sole discretion of the employer at or near
28 the end of the period and not pursuant to any prior con-
29 tract, agreement or promise causing the employee to expect
30 such payments regularly; or (b) the payments are made
31 pursuant to a bona fide profit-sharing plan or trust or bona
32 fide thrift or savings plan, meeting the requirements of the

33 commissioner set forth in appropriate regulation which he
34 shall issue, having due regard among other relevant factors,
35 to the extent to which the amounts paid to the employee are
36 determined without regard to hours of work, production or
37 efficiency; or (c) the payments are talent fees (as such
38 talent fees are defined and delimited by regulations of the
39 commissioner) paid to performers, including announcers, on
40 radio and television programs;

41 (4) Contributions irrevocably made by an employer to a
42 trustee or third person pursuant to a bona fide plan for
43 providing old-age, retirement, life, accident, or health in-
44 surance or similar benefits for employees;

45 (5) Extra compensation provided by a premium rate paid
46 for certain hours worked by the employee in any day or
47 workweek because such hours are hours worked in excess of
48 eight in a day or in excess of the maximum workweek ap-
49 plicable to such employee under subsection (a) or in excess
50 of the employee's normal working hours or regular working
51 hours, as the case may be;

52 (6) Extra compensation provided by a premium rate paid
53 for work by the employee on Saturdays, Sundays, holidays or
54 regular days of rest, or on the sixth or seventh day of the
55 workweek, where such premium rate is not less than one and
56 one-half times the rate established in good faith for like
57 work performed in nonovertime hours on other days; or

58 (7) Extra compensation provided by a premium rate paid
59 to the employee, in pursuance of an applicable employment
60 contract or collective bargaining agreement, for work out-
61 side of the hours established in good faith by the con-
62 tract or agreement as the basic, normal or regular work-
63 week where such premium rate is not less than one and
64 one-half times the rate established in good faith by the
65 contract or agreement for like work performed during such
66 workweek.

67 (c) No employer shall be deemed to have violated sub-
68 section (a) by employing any employee for a workweek in
69 excess of the maximum workweek applicable to such employee
70 under subsection (a) if such employee is employed pursuant
71 to a bona fide individual contract, or pursuant to an agree-

72 ment made as a result of collective bargaining by repre-
73 sentatives of employees, if the duties of such employee neces-
74 sitate irregular hours of work, and the contract or agree-
75 ment (1) specifies a regular rate of pay of not less than
76 the minimum hourly rate provided in section two and com-
77 pensation at not less than one and one-half times such rate
78 for all hours worked in excess of such maximum workweek,
79 and (2) provides a weekly guaranty of pay for not more than
80 sixty hours based on the rates so specified.

81 (d) No employer shall be deemed to have violated sub-
82 section (a) by employing any employee for a workweek in
83 excess of the maximum workweek applicable to such employee
84 under such subsection if, pursuant to an agreement or under-
85 standing arrived at between the employer and the employee
86 before performance of the work, the amount paid to the
87 employee for the number of hours worked by him in such
88 workweek in excess of the maximum workweek applicable to
89 such employee under such subsection:

90 (1) In the case of an employee employed at piece rates,
91 is computed at piece rates not less than one and one-half
92 times the bona fide piece rates applicable to the same work
93 when performed during nonovertime hours; or

94 (2) In the case of an employee performing two or more
95 kinds of work for which different hourly or piece rates have
96 been established, is computed at rates not less than one and
97 one-half times such bona fide rates applicable to the same
98 work when performed during nonovertime hours; or

99 (3) Is computed at a rate not less than one and one-
100 half times the rate established by such agreement or under-
101 standing as the basic rate to be used in computing overtime
102 compensation thereunder: *Provided*, That the rate so estab-
103 lished shall be authorized by regulation by the commissioner
104 as being substantially equivalent to the average hourly earnings
105 of the employee, exclusive of overtime premiums, in the
106 particular work over a representative period of time; and if
107 (i) the employee's average hourly earnings for the workweek
108 exclusive of payments described in subdivisions (1) through
109 (7) of subsection (b) are not less than the minimum hourly
110 rate required by applicable law, and (ii) extra overtime com-

111 pension is properly computed and paid on other forms of
112 additional pay required to be included in computing the
113 regular rate.

114 (e) Extra compensation paid as described in subdivisions
115 (5), (6) and (7) of subsection (b) shall be creditable toward
116 overtime compensation payable pursuant to this section.

CHAPTER 65

(S. B. 270—By Mr. Gainer and Mr. Benson)

[Passed March 11, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact sections five, five-a, six and eleven, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state board of examiners of land surveyors; the manner of appointment of members of such board; increasing the fees to be charged by such board; providing for payment of a fee for certificate to engage in underground surveying; use of seal or stamp; and making it unlawful to use stamp or seal if not properly licensed.

Be it enacted by the Legislature of West Virginia:

That sections five, five-a, six and eleven, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. LAND SURVEYORS.

§30-13A-5. Qualifications of applicants for licenses; exceptions; applications; fees; examinations.

§30-13A-5a. Underground surveying; additional requirements.

§30-13A-6. Issuance of license; notice of expiration; renewal; renewal fee; display.

§30-13A-11. Seal or stamp.

§30-13A-5. Qualifications of applicants for licenses; exceptions; applications; fees; examinations.

1 (a) To be eligible for a license to engage in the
2 practice of land surveying, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Have been a resident of the United States for
6 one year immediately preceding the date of applica-
7 tion;

8 (4) Not have been convicted of a crime involving
9 moral turpitude;

10 (5) Have four years or more experience in the prac-
11 tice of land surveying under the supervision of a licensee,
12 or a person eligible for a license hereunder, or a person
13 authorized in another state or country to engage in
14 the practice of land surveying; and each year of satis-
15 factory study in an accredited surveying curriculum
16 may be substituted for one year of experience, but only
17 two years of such experience requirement may be ful-
18 filled by such study; and

19 (6) Have passed the examination prescribed by the
20 board, which examination shall cover the basic subject
21 matter of land surveying and land surveying skills and
22 techniques.

23 (b) The following persons shall be eligible for a
24 license to engage in the practice of land surveying with-
25 out examination:

26 (1) Any applicant who is licensed, certificated or regis-
27 tered to engage in the practice of land surveying in
28 any other state or country, if the requirements to ob-
29 tain a license or certificate or to become registered in
30 such other state or country are found by the board to
31 be at least as great as those prescribed in this article.

32 (2) Any applicant who is a graduate of an accredited
33 surveying curriculum and has at least two years of ex-
34 perience in the practice of land surveying under the

35 supervision of a licensee, or a person eligible for a
36 license hereunder, or a person authorized in another
37 state or country to engage in the practice of land sur-
38 veying, if such applicant meets the requirements of
39 subdivisions (1), (2), (3) and (4), subsection (a) of this
40 section.

41 (3) Any applicant who has been engaged in the prac-
42 tice of land surveying in West Virginia for at least six
43 years prior to the filing of such application, if such ap-
44 plication for a license is made within three years after
45 the effective date of this article and if such person meets
46 the requirements of subdivisions (1), (2), (3) and (4),
47 subsection (a) of this section. Such applicant must also
48 furnish the names and addresses of ten persons who
49 have engaged such applicant as a land surveyor, to-
50 gether with satisfactory records of such land surveying
51 work.

52 (c) Any applicant for any such license shall submit
53 an application therefor on forms provided by the board.
54 Such application shall be verified and shall contain a
55 statement of the applicant's education and experience,
56 the names of five persons for reference (at least three of
57 whom shall be licensees, or persons eligible for a
58 license hereunder, or persons authorized in another
59 state or country to engage in the practice of land sur-
60 veying, who have knowledge of his work) and such
61 other information as the board may from time to
62 time by reasonable rule and regulation prescribe.

63 (d) An applicant shall pay to the board with his
64 application a license fee of thirty dollars.

65 (e) Examinations shall be held at least once each
66 year at such time and place as the board shall deter-
67 mine. The scope of the examination and methods of
68 procedure shall be determined by the board. An ap-
69 plicant who fails to pass an examination may reapply
70 at any time and shall furnish additional information
71 as requested by the board. Each such application shall
72 be accompanied by a license fee of thirty dollars.

73 (f) A licensee who obtained his license under the

74 provisions of subdivisions (2) and (3), subsection (b)
75 of this section may, in addition, apply for licensing un-
76 der the provisions of subsection (a) of this section,
77 if such licensee pays the fee otherwise required to
78 be paid by other applicants and if such licensee meets
79 the qualifications of subsection (a). Any applicant may
80 apply for a separate license under subsection (a), or
81 subdivisions (2) or (3), subsection (b) of this section
82 upon the payment of the required fee for each license,
83 and he may receive a license for each subsection for which
84 such person makes application and is qualified. If
85 any person fails to qualify for a license under any
86 subsection of this section, such failure to qualify shall
87 not prevent such person's licensure under any other
88 subsection of this section for which such person is other-
89 wise qualified.

§30-13A-5a. Underground surveying; additional requirements.

1 After the first day of July, one thousand nine hundred
2 seventy, no person required to be licensed under the
3 provisions of this article shall engage in underground
4 surveying until he shall have first obtained a license
5 under the provisions of this article and in addition shall
6 have received from the board, after application therefor
7 and payment of a ten dollar fee, a certificate to engage
8 in underground surveying, which certificate shall remain
9 valid so long and only so long as the license issued to
10 such person under the provisions of this article remains
11 unexpired, unsuspended and unrevoked. In order to be
12 eligible for such certificate such person shall, in addition
13 to the requirements for a license, have three years or
14 more experience in the practice of underground survey-
15 ing. In the event an application for any such certificate
16 is denied, all of the provisions of sections nine and ten
17 of this article shall be as fully applicable as if the applica-
18 tion denied were an application for a license under the
19 provisions of this article.

**§30-13A-6. Issuance of license; notice of expiration; renewal;
renewal fee; display.**

1 Whenever the board finds that an applicant meets all

2 of the requirements of this article for a license to en-
3 gage in the practice of land surveying, it shall forth-
4 with issue to him such license; and otherwise the board
5 shall deny the same. All licenses, whether original or
6 renewal, shall expire on the thirtieth day of June fol-
7 lowing the date of issuance or renewal. The secretary-
8 treasurer of the board shall mail to every licensee, at
9 least thirty days prior to the expiration of such license,
10 notice of the expiration date and the amount of the
11 renewal fee. A license may be renewed without exam-
12 ination upon application for a renewal on a form pre-
13 scribed by the board and payment to the board of an
14 annual renewal fee of twenty dollars. If a license is
15 not renewed when due, the fee shall increase one dollar
16 per month for each month or fraction thereof that such
17 renewal fee is not paid, up to a maximum of thirty-six
18 months. No license shall be renewed after expiration
19 of said period of thirty-six months, and the fact that a
20 license cannot be renewed because of the expiration of
21 said period of thirty-six months shall not prevent such
22 person from making application for a new license. The
23 board may deny any application for renewal for any
24 reason which would justify the denial of an original
25 application for a license. The board shall prescribe the
26 form of licenses and each such license shall be conspicu-
27 ously displayed by the licensee at his principal place of
28 practice. A duplicate license may be issued upon
29 payment of a fee of five dollars.

§30-13A-11. Seal or stamp.

1 Each licensee shall obtain a seal or stamp of the de-
2 sign authorized by the board, bearing his name and the
3 legend, "Licensed Land Surveyor." Plans, plats, maps,
4 drawings and reports issued by a licensee shall be
5 stamped with the seal or stamp. It shall be unlawful
6 for anyone to stamp or seal any document with such
7 seal or stamp unless the license of the licensee named
8 thereon remains unsuspended, unrevoked and unexpired.

CHAPTER 66

(S. B. 222—Originating in the Senate Committee on the Judiciary)

[Passed March 13, 1976; in effect January 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; relating to senatorial redistricting; providing a short title for such section; defining the terms "county," "enumeration district," "incumbent senator" and "magisterial district" for the purposes of such section; setting forth certain legislative findings and declarations; dividing the state into seventeen senatorial districts for the purpose of electing thirty-four senators; declaring such senatorial districts as of the first day of January, one thousand nine hundred seventy-seven; establishing residency dispersal requirements for the election of senators in furtherance of the rationale of the residency dispersal provisions of the West Virginia constitution relating to the election of senators; relating to nomination and election procedures with respect to candidates for the Senate; providing that members of the Senate elected at the general election held in the year one thousand nine hundred seventy-four and at the general election held in the year one thousand nine hundred seventy-six, and persons elected or appointed to fill vacancies in the Senate, shall continue to serve as members of the Senate for the term, and as representatives of the senatorial district for which each thereof, respectively, was elected or appointed; requiring county commissions to alter the boundary lines of any election precinct which contains territory included within more than one non-superimposed senatorial district so that no election precinct contains territory included within more than one nonsuperimposed senatorial district; extending the terms of members of senatorial executive committees; relating to the duties of such committees; providing for new and additional senatorial executive committees; specifying the duties, qualifications and terms of such committees and of the members thereof; relating to vacancies in and officers of

such committees; and authorizing the secretary of state to promulgate rules and regulations implementing the provisions of such section.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-1. Senatorial districts.

1 (a) This section shall be known and may be cited as
2 "The Senate Redistricting Act."

3 (b) As used in this section:

4 (1) "County" means the territory comprising a county
5 of this state as such county existed on the first day
6 of January, one thousand nine hundred seventy, not-
7 withstanding any boundary changes thereof made sub-
8 sequent thereto;

9 (2) "Enumeration district" means that geographic
10 area so designated and defined by the bureau of
11 the census of the United States department of com-
12 merce for the taking of the one thousand nine hun-
13 dred seventy census of population and described on
14 census maps prepared by the bureau of the census,
15 copies of which maps are on file in the office of the sec-
16 retary of state;

17 (3) "Incumbent senator" means a senator elected at
18 the general election held in the year one thousand
19 nine hundred seventy-six, or at any general election
20 thereafter, with an unexpired term of at least two years
21 in duration;

22 (4) "Magisterial district" means the territory com-
23 prising a magisterial district as such magisterial district
24 existed on the first day of January, one thousand nine
25 hundred seventy (except that for the county of Ohio,
26 "magisterial district" means the territory comprising a
27 magisterial district of Ohio county as such magisterial
28 district existed on the first day of July, one thousand

29 nine hundred sixty-nine), as shown and described on
30 census maps prepared by the bureau of the census,
31 copies of which maps are on file in the office of the sec-
32 retary of state; and

33 (5) "Census tract" means that geographic area so
34 designated and defined by the bureau of the census
35 of the United States department of commerce for the
36 taking of the one thousand nine hundred seventy census
37 of population and described on census maps prepared
38 by the bureau of the census, copies of which maps
39 are on file in the office of the secretary of state.

40 (c) The Legislature recognizes that in dividing the
41 state into senatorial districts, the Legislature is bound
42 not only by the United States constitution but also by
43 the West Virginia constitution; that in any instance
44 where the West Virginia constitution conflicts with the
45 United States constitution, the United States consti-
46 tution must govern and control, as recognized in section
47 one, article one of the West Virginia constitution; that
48 the United States constitution, as interpreted by the
49 United States supreme court and other federal courts,
50 requires state legislatures to be apportioned so as to
51 achieve equality of population as near as is practicable,
52 population disparities being permissible where justified by
53 rational state policies; and that the West Virginia con-
54 stitution requires two senators to be elected from each
55 senatorial district for terms of four years each, one
56 such senator being elected every two years, with one
57 half of the senators being elected biennially, and re-
58 quires senatorial districts to be compact, formed of
59 contiguous territory and bounded by county lines. The
60 Legislature finds and declares that it is not possible to
61 divide the state into senatorial districts so as to achieve
62 equality of population as near as is practicable as re-
63 quired by the United States supreme court and other
64 federal courts and at the same time adhere to all of
65 these provisions of the West Virginia constitution; but
66 that, in an effort to adhere as closely as possible to all
67 of these provisions of the West Virginia constitution,
68 the Legislature, in dividing the state into senatorial

69 districts, as described and constituted in subsection (d)
70 hereof, has:

71 (1) Adhered to the equality of population concept,
72 while at the same time recognizing that from the for-
73 mation of this state in the year one thousand eight
74 hundred sixty-three, each constitution of West Virginia
75 and the statutes enacted by the Legislature have rec-
76 ognized political subdivision lines and many functions,
77 policies and programs of government have been imple-
78 mented along political subdivision lines;

79 (2) Made the senatorial districts as compact as pos-
80 sible, consistent with the equality of population con-
81 cept;

82 (3) Formed the senatorial districts of "contiguous
83 territory" as that term has been construed and ap-
84 plied by the West Virginia supreme court of appeals;

85 (4) Deviated from the long-established state policy,
86 recognized in (1) above, by crossing county lines only
87 when necessary to insure that all senatorial dis-
88 tricts were formed of contiguous territory or when
89 adherence to county lines produced unacceptable pop-
90 ulation inequalities and only to the extent necessary
91 in order to maintain contiguity of territory and to achieve
92 acceptable equality of population;

93 (5) When crossing county lines, adhered, whenever
94 possible, in furtherance of the long-established state
95 policy, recognized in (1) above, to the boundary
96 lines of magisterial districts, tax districts or municipal
97 corporations; and

98 (6) Also taken into account in crossing county lines,
99 to the extent feasible, the community of interests of the
100 people involved.

101 (d) In view of the fact that persons have already
102 filed their certificates of candidacy for nomination and
103 election to the Senate at the primary and general elec-
104 tions to be held in the year one thousand nine hun-
105 dred seventy-six, from the senatorial districts de-
106 scribed and constituted by chapter one, acts of the

107 Legislature, first extraordinary session, one thousand
108 nine hundred sixty-four, and in view of the fact that
109 it was not possible to declare the new senatorial dis-
110 tricts prior to the closing date for the filing of certificates
111 of candidacy with respect to such elections or in time
112 for the holding of such elections without interruption
113 of the orderly procedures established therefor, the
114 senatorial districts hereinafter in this subsection de-
115 scribed and constituted are hereby declared as of the
116 first day of January, one thousand nine hundred seventy-
117 seven. On and after that date, the Senate shall be com-
118 posed of thirty-four senators, one senator to be elected
119 at the general election to be held in the year one
120 thousand nine hundred seventy-eight and biennially
121 thereafter for a four-year term from each of the sen-
122 atorial districts hereinafter in this subsection described
123 and constituted as follows:

124 (1) The counties of Brooke and Hancock and the
125 magisterial districts of Liberty, Richland and Triadel-
126 phia of the county of Ohio and census tract nineteen
127 of the magisterial district of Ritchie of the county
128 of Ohio shall constitute the first senatorial district;

129 (2) The counties of Doddridge, Marshall, Ritchie,
130 Tyler and Wetzel and that portion of the county
131 of Ohio not included in the first senatorial district shall
132 constitute the second senatorial district;

133 (3) The counties of Calhoun, Pleasants, Wirt and Wood
134 shall constitute the third senatorial district;

135 (4) The counties of Jackson, Mason, Putnam and
136 Roane and the magisterial district of Grant of the county
137 of Cabell shall constitute the fourth senatorial dis-
138 trict;

139 (5) That portion of the county of Cabell not in-
140 cluded in the fourth senatorial district, enumeration
141 districts one, two, three, four and five of the magis-
142 terial district of Westmoreland of the county of Wayne,
143 and enumeration districts fifteen, sixteen, seventeen,
144 eighteen, nineteen, twenty and twenty-one of the mag-

145 isterial district of Ceredo of the county of Wayne shall
146 constitute the fifth senatorial district;

147 (6) The county of Mingo, that portion of the
148 county of Wayne not included in the fifth or seventh
149 senatorial districts, and that portion of the county of
150 McDowell not included in the tenth senatorial district
151 shall constitute the sixth senatorial district;

152 (7) The counties of Boone, Lincoln and Logan and
153 the magisterial districts of Stonewall and Union of
154 the county of Wayne shall constitute the seventh sen-
155 atorial district;

156 (8) The county of Kanawha shall constitute the
157 eighth senatorial district;

158 (9) The counties of Raleigh and Wyoming shall con-
159 stitute the ninth senatorial district;

160 (10) The counties of Mercer, Monroe and Summers,
161 and the magisterial districts of Elkhorn and North-
162 fork of the county of McDowell shall constitute the tenth
163 senatorial district;

164 (11) The counties of Clay, Fayette and Greenbrier
165 and the magisterial district of Jefferson of the county
166 of Nicholas shall constitute the eleventh senatorial
167 district;

168 (12) The counties of Braxton, Gilmer, Pendleton,
169 Pocahontas, Randolph and Webster and that portion
170 of the county of Nicholas not included in the eleventh
171 senatorial district shall constitute the twelfth senatorial
172 district;

173 (13) The counties of Harrison and Lewis and the
174 magisterial district of Mannington of the county of
175 Marion shall constitute the thirteenth senatorial dis-
176 trict;

177 (14) That portion of the county of Marion not in-
178 cluded in the thirteenth senatorial district and that
179 portion of the county of Monongalia not included in
180 the fifteenth senatorial district shall constitute the four-
181 teenth senatorial district;

182 (15) The counties of Barbour, Grant, Preston, Tay-
183 lor, Tucker and Upshur, and the magisterial district
184 of Clinton of the county of Monongalia and enumera-
185 tion districts thirty-three, thirty-four, thirty-five-a,
186 thirty-five-b, thirty-six and thirty-seven of the magis-
187 terial district of Morgan of the county of Monongalia
188 shall constitute the fifteenth senatorial district;

189 (16) The counties of Berkeley, Hampshire, Hardy,
190 Jefferson, Mineral and Morgan shall constitute the six-
191 teenth senatorial district; and

192 (17) The county of Kanawha shall constitute the
193 seventeenth senatorial district.

194 (e) The West Virginia constitution further provides,
195 in section four, article six thereof, that where a
196 senatorial district is composed of more than one
197 county, both senators for such district shall not be
198 chosen from the same county, a residency dispersal
199 provision which is clear with respect to senatorial dis-
200 tricts which follow county lines, as required by such
201 constitution, but which is not clear in application with
202 respect to senatorial districts which cross county
203 lines. However, in an effort to adhere as closely
204 as possible to the West Virginia constitution in this
205 regard, the following additional provisions, in further-
206 ance of the rationale of such residency dispersal pro-
207 vision and to give meaning and effect thereto, are hereby
208 established:

209 (1) With respect to a senatorial district which is
210 composed of one or more whole counties and one or
211 more parts of another county or counties, no more than
212 one senator shall be chosen from the same county or
213 part of a county to represent such senatorial dis-
214 trict;

215 (2) With respect to a senatorial district which does
216 not contain any whole county but only parts of two
217 or more counties, no more than one senator shall be
218 chosen from the same part to represent such senatorial
219 district; and

220 (3) With respect to superimposed senatorial dis-
221 tricts which contain only one whole county, all senators
222 shall be chosen from such county to represent such sen-
223 atorial districts.

224 (f) Candidates for the Senate shall be nominated as
225 provided in section four, article five, chapter three of
226 this code, except that such candidates shall be nom-
227 inated in accordance with the residency dispersal pro-
228 visions specified in section four, article six of the West
229 Virginia constitution and the additional residency dis-
230 persal provisions specified in subsection (e) hereof.
231 Candidates for the Senate shall also be elected in ac-
232 cordance with the residency dispersal provisions speci-
233 fied in said section four, article six of the West Vir-
234 ginia constitution and the additional residency dispersal
235 provisions specified in subsection (e) hereof. In further-
236 ance of the foregoing provisions of this subsection (f),
237 no person may file a certificate of candidacy for elec-
238 tion from a senatorial district described and constituted
239 in subsection (d) hereof if he resides in the same county
240 and the same such senatorial district wherein also
241 resides an incumbent senator, whether the senatorial
242 district wherein such incumbent senator resides was
243 described and constituted by chapter one, acts of the
244 Legislature, first extraordinary session, one thousand
245 nine hundred sixty-four or was described and consti-
246 tuted in subsection (d) hereof. Any vacancy in a nom-
247 ination shall be filled, any appointment to fill a vacancy
248 in the Senate shall be made, and any candidates in an
249 election to fill a vacancy in the Senate shall be chosen,
250 so as to be consistent with the residency dispersal
251 provisions specified in section four, article six of the
252 West Virginia constitution and the additional resi-
253 dency dispersal provisions specified in subsection (e)
254 hereof.

255 (g) Regardless of the changes in senatorial district
256 boundaries made by the provisions of subsection (d)
257 hereof, all senators elected at the general election held
258 in the year one thousand nine hundred seventy-four
259 and at the general election held in the year one thou-

260 sand nine hundred seventy-six shall continue to hold
261 their seats as members of the Senate for the term,
262 and as representatives of the senatorial district, for
263 which each thereof, respectively, was elected. Any
264 appointment made or election held to fill a vacancy
265 in the Senate shall be for the remainder of the term,
266 and as a representative of the senatorial district, for
267 which the vacating senator was elected or appointed,
268 and any such election shall be held in the district as
269 the same was described and constituted at the time the
270 vacating senator was elected or appointed.

271 (h) Notwithstanding the provisions of sections five
272 and seven, article one, chapter three of this code, if
273 an election precinct of this state contains territory in-
274 cluded within more than one senatorial district (other
275 than a superimposed senatorial district), as such sen-
276 atorial districts are described and constituted by
277 subsection (d) hereof, it shall be the duty of the county
278 commission of the county in which such precinct is
279 located to alter the boundary lines of the county's elec-
280 tion precincts prior to the first day of January, one
281 thousand nine hundred seventy-eight, so that no elec-
282 tion precinct contains territory which is included within
283 more than one such senatorial district.

284 (i) Notwithstanding the provisions of section nine,
285 article one, chapter three of this code, persons elected
286 to senatorial district political party executive commit-
287 tees at the primary election held in the year one thou-
288 sand nine hundred seventy-four, as well as persons
289 appointed to fill vacancies in such committees, shall
290 continue to hold such positions until the first day of
291 December, one thousand nine hundred seventy-eight,
292 for the purpose of filling vacancies in nomination for
293 senator and for the purpose of submitting names to
294 the governor to fill vacancies in the Senate, when such
295 vacancies exist with respect to senatorial districts de-
296 scribed and constituted by chapter one, acts of the
297 Legislature, first extraordinary session, one thousand
298 nine hundred sixty-four. For the purpose of filling
299 vacancies in nomination and vacancies in office when

300 such vacancies exist with respect to senatorial districts
301 described and constituted by subsection (d) hereof, new
302 and additional senatorial district political party execu-
303 tive committees are constituted as follows: At the
304 primary election to be held in the year one thousand
305 nine hundred seventy-eight and in every fourth year
306 subsequent to that primary election, the voters of each
307 political party in each senatorial district, as such dis-
308 tricts are described and constituted by subsection
309 (d) hereof, shall elect two male and two female
310 persons to membership in the senatorial district execu-
311 tive committee created pursuant to this subsection. All
312 members of such executive committees so elected shall
313 reside within the senatorial district from which they
314 are chosen, and the terms of such members shall begin
315 on the first day of June, following the primary election
316 at which they are chosen, and shall continue for four
317 years and until their successors are elected or appointed
318 and qualified. Vacancies in senatorial district executive
319 committees shall be filled by the state chairman of
320 the political party executive committee concerned, but
321 the person filling the vacancy must be a resident of
322 the senatorial district involved. As soon as possible
323 after the first day of June, following the election of
324 the new executive committees, as herein provided, such
325 committees shall convene within their respective sen-
326 atorial districts on the call of any member of the
327 new executive committee and proceed to select a
328 chairman, a secretary, and such other officers as they
329 may desire, each of which officers shall, for their re-
330 spective committees, perform the duties which usually
331 appertain to such positions. The provisions of this sub-
332 section (i) shall govern and control notwithstanding
333 the provisions of section nine, article one, chapter three
334 of this code.

335 (j) The secretary of state may promulgate rules
336 and regulations to implement the provisions of this sec-
337 tion, including emergency rules and regulations pro-
338 mulgated pursuant to the provisions of section five,
339 article three, chapter twenty-nine-a of this code.

CHAPTER 67

(S. B. 521—By Mr. Brotherton, Mr. President)

[Passed March 7, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Legislature; joint committee on government and finance; access by committee to records of state agencies and departments; compelling attendance of witnesses and production of evidence at hearings or meetings of the committee; and authorizing the committee to enforce subpoenas by attachment, fine or imprisonment, or, in the alternative, by petitioning a court of competent jurisdiction to compel obedience thereto.

Be it enacted by the Legislature of West Virginia:

That section four, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-4. Access to records of state agency or department; public hearings; meetings; administering oaths to persons testifying; compelling access to records and attendance of witnesses; production of evidence.

1 For the purpose of obtaining information in conjunction with the formulation of new laws or the revision of existing laws or in conjunction with any investigation or survey, the committee, or an employee duly authorized by the committee, shall have access to any and all records of every agency or department of the state.

2 In addition to its regular and special meetings, the committee, or any employee duly authorized by the committee, is empowered to hold public hearings in furtherance of the purposes authorized by this article, at such times and places within the state as may be desirable, and either cochairman or any member of the committee

13 shall have the power to administer oaths to persons
14 testifying at such hearings or meetings.

15 By subpoena, issued over the signature of either co-
16 chairman of the committee and served in the manner
17 provided by law, the committee may summon and compel
18 the attendance of witnesses and their examination under
19 oath and the production of all books, papers, docu-
20 ments and records necessary or convenient to be ex-
21 amined and used by the committee in the performance
22 of its duties. If any witness subpoenaed to appear at
23 any hearing or meeting shall refuse to appear or to an-
24 swer inquiries there propounded, or shall fail or re-
25 fuse to produce books, papers, documents or records
26 within his or her control when the same are demanded,
27 the committee in its discretion may enforce obedience
28 to its subpoena by attachment, fine or imprisonment, as
29 provided in section five, article one of this chapter; or
30 it may report the facts to the circuit court of Kanawha
31 County or any other court of competent jurisdiction
32 and such court shall compel obedience to the subpoena
33 as though such subpoena had been issued by such court
34 in the first instance.

35 Witnesses subpoenaed to attend such hearings or meet-
36 ings, except officers or employees of the state, shall be
37 allowed the same mileage and per diem as is allowed
38 witnesses before any petit jury in this state.

CHAPTER 68

(Com. Sub. for H. B. 714—By Mr. Chafin and Mr. Shaffer)

[Passed February 24, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and five, article one-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to changing the director of the department of mental health to the commissioner of the department of mental health; relating

to the appointment of a deputy commissioner for clinical services; prescribing qualifications of the commissioner; and prescribing certain powers and duties of the commissioner.

Be it enacted by the Legislature of West Virginia:

That sections three, four and five, article one-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. DEPARTMENT OF MENTAL HEALTH.

§27-1A-3. Appointment of commissioner; qualifications; term; oath; bond; salary and expenses.

§27-1A-4. Powers and duties of the commissioner; power of eminent domain.

§27-1A-5. Division of administration; deputy; deputy commissioner; deputy commissioner's qualifications, powers and duties.

§27-1A-3. Appointment of commissioner; qualifications; term; oath; bond; salary and expenses.

1 The governor shall appoint the commissioner of the de-
2 partment of mental health by and with the consent of the
3 Senate; he shall be known as the commissioner of mental
4 health. Before entering upon the duties of his office, the
5 commissioner shall take and subscribe the oath of office
6 prescribed by section five, article four of the constitution of
7 this state, the certificate whereof shall be filed in the office
8 of the secretary of state, and he shall give bond in the penalty
9 of ten thousand dollars, conditioned as required by law. The
10 commissioner shall serve at the will and pleasure of the gov-
11 ernor. The salary of the commissioner shall be the salary
12 specified in section two-a, article seven, chapter six of this
13 code and in addition thereto he shall be reimbursed for all
14 necessary travel and other expenses incurred in the perfor-
15 mance of his duties. The commissioner shall be either a quali-
16 fied psychiatrist or physician with both clinical and adminis-
17 trative experience, or, a qualified administrator who has at
18 least a masters degree in business administration, hospital ad-
19 ministration, or a related field, and not less than four years'
20 experience in health services administration or hospital ad-
21 ministration, and with general knowledge of accounting, pur-
22 chasing and personnel practices as related to the rendition of
23 health and health related services: *Provided*, That if the

24 commissioner is other than a psychiatrist or physician there
25 shall be appointed by the commissioner a deputy commissioner
26 for clinical services who shall be a psychiatrist.

27 Notwithstanding any other provision of this code to the
28 contrary, whenever in this code there is a reference to the
29 director of the department of mental health, it shall be con-
30 strued to mean and shall be a reference to the commissioner
31 of the department of mental health.

§27-1A-4. Powers and duties of the commissioner; power of eminent domain.

1 The commissioner shall be the executive head of the de-
2 partment, and as such shall have the following powers and
3 duties:

4 (a) To develop and maintain a state plan which sets forth
5 needs of the state in the areas of mental health and mental
6 retardation; goals and objectives for meeting those needs; plan
7 of operation for achieving the stated goals and objectives,
8 including organizational structure; and statement of require-
9 ments in personnel funds and authority for achieving the goals
10 and objectives.

11 (b) To appoint deputies and assistants to supervise the de-
12 partmental programs, including hospital and residential ser-
13 vices, and such other assistants and employees as may be
14 necessary for the efficient operation of the department and
15 all its programs.

16 (c) To promulgate rules and regulations clearly specifying
17 the respective duties and responsibilities of program directors
18 and fiscal administrators, making a clear distinction between
19 the respective functions of these officials.

20 (d) To delegate to any of his appointees, assistants or
21 employees all powers and duties vested in the commissioner,
22 including the power to execute contracts and agreements in
23 the name of the department as provided in this article, but
24 the commissioner shall be responsible for the acts of such
25 appointees, assistants and employees.

26 (e) To supervise and coordinate the operation of the state
27 hospitals named in article two of this chapter and any other
28 state hospitals, centers or institutions hereafter created for

29 the care and treatment of the mentally ill or mentally retarded,
30 or both.

31 (f) To transfer a patient from any state hospital to any
32 other state hospital or clinic under his control and, by
33 agreement with the state commissioner of public institutions,
34 transfer a patient from a state hospital to an institution,
35 other than correctional, under the supervision of the state
36 commissioner of public institutions.

37 (g) To make periodic reports to the governor and to the
38 Legislature on the condition of the state hospitals, centers
39 and institutions or on other matters within his authority,
40 which shall include recommendations for improvement of
41 any mental health facility and any other matters affecting
42 the mental health of the people of the state.

43 The commissioner of mental health shall have all of the
44 authority vested in the divisions of the department, as here-
45 inafter provided.

46 The commissioner is hereby authorized and empowered to
47 accept and use for the benefit of a state hospital, center or
48 institution, or for any other mental health purpose specified
49 in this chapter, any gift or devise of any property or thing
50 which lawfully may be given. If such a gift or devise is
51 for a specific purpose or for a particular state hospital,
52 center or institution, it shall be used as specified. Any gift
53 or devise of any property or thing which lawfully may be
54 given and whatever profit may arise from its use or invest-
55 ment shall be deposited in a special revenue fund with the
56 state treasurer, and shall be used only as specified by the
57 donor or donors.

58 Whenever it shall become necessary, the department of
59 mental health may condemn any interest, right or privilege,
60 land or improvement, which in its opinion may be necessary,
61 in the manner provided by law, for the acquisition by this
62 state of property for public purposes.

**§27-1A-5. Division of administration; deputy; deputy commissioner;
deputy commissioner's qualifications, powers and duties.**

1 There shall be a division of administration in the department

2 of mental health. The chief executive of this division shall be
3 the deputy commissioner for administration. The deputy
4 commissioner shall be a college graduate with not less than
5 two years' experience in business administration, health services
6 administration or hospital administration, with broad knowl-
7 edge of accounting, purchasing and personnel practices as
8 related to the rendition of health and health related services.
9 He shall have the following duties:

10 (a) To keep the records in the department.

11 (b) To receive and disburse funds for the department as
12 the agent of the commissioner of the department.

13 (c) To assemble and analyze departmental budget estimates,
14 review requests for transfer of funds and maintain depart-
15 mental appropriation and fiscal records.

16 (d) To make rules and regulations governing the administra-
17 tion and business management of the state hospitals, formulate
18 standard fiscal procedures, and make recommendations for
19 improvement; to make regulations concerning any superin-
20 tendent's trustee funds heretofore established by authority of
21 section three-a, article one, chapter twenty-five of the code of
22 West Virginia, one thousand nine hundred thirty-one, as
23 amended.

24 (e) To have the responsibility for the maintenance of the
25 land, buildings and equipment of state hospitals.

26 (f) To review requisitions for supplies and equipment, and
27 cooperate with the division of purchases in development and
28 drafting of specifications.

29 (g) To handle the personnel records of the department
30 and to process payrolls.

31 (h) To enter into contracts for the department consistent
32 with his assigned duties.

33 (i) To develop job classifications and standards for em-
34 ployees of the department.

35 (j) To perform any other duties assigned to the division by
36 the commissioner.

CHAPTER 69

(S. B. 41—By Mr. Hinkle and Mr. Harman)

[Passed March 8, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to qualifications of an underground mine foreman—fire boss or an assistant underground mine foreman—fire boss.

Be it enacted by the Legislature of West Virginia:

That section seven, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. COAL MINES.

§22-2-7. When underground mine foreman—fire boss required; assistants; certification.

1 (a) In every underground mine where five or more
2 persons are employed in a period of twenty-four hours,
3 the operator shall employ at least one person certified in
4 accordance with the provisions of article six-a of this
5 chapter as a mine foreman—fire boss. Each applicant for
6 certification as a mine foreman—fire boss shall, at the
7 time he is issued a certificate of competency: (1) Be a
8 resident or employed in a mine in this state; (2) have had
9 at least five years' experience in the underground work-
10 ing, ventilation and drainage of a coal mine, which shall
11 include at least eighteen months' experience on or at a
12 working section of an underground mine or be a graduate
13 of the school of mines at West Virginia University or of
14 another accredited mining engineering school or be a
15 graduate of an accredited engineering school with a
16 bachelor's degree in mining engineering technology, elec-
17 trical or mechanical engineering; and have had at least
18 two years' practical experience in an underground

19 mine, which shall include at least eighteen months'
20 experience on or at a working section of an underground
21 mine; or be a graduate of an accredited college or uni-
22 versity with an associate degree in mining, electrical,
23 mining engineering technology or mechanical engineer-
24 ing and have had at least four years' practical exper-
25 ience in an underground mine, which shall include at
26 least eighteen months' experience on or at a work-
27 ing section of an underground mine; and (3) have
28 demonstrated his knowledge of dangerous mine gases
29 and their detection, mine safety, first aid, safety appli-
30 ances, state and federal mining laws and regulations
31 and other subjects by completing such training, edu-
32 cation and examinations as may be required of him
33 under article six-a of this chapter.

34 (b) In mines in which the operations are so extensive
35 that the duties devolving upon the mine foreman—fire
36 boss cannot be discharged by one man, one or more
37 assistant mine foremen—fire bosses may be designated.
38 Such persons shall act under the instruction of the mine
39 foreman—fire boss, who shall be responsible for their
40 conduct in the discharge of their duties. Each assistant
41 so designated shall be certified under the provisions of
42 article six-a of this chapter. Each applicant for certifi-
43 cation as assistant mine foreman—fire boss shall, at the
44 time he is issued a certificate of competency, possess all
45 of the qualifications required of a mine foreman—fire
46 boss: *Provided*, That he shall at the time he is certified
47 be required to have at least three years' experience
48 in the underground working, ventilation and drainage
49 of coal mines, which shall include eighteen months on
50 or at a working section of an underground mine or be
51 a graduate of the school of mines at West Virginia Uni-
52 versity or of another accredited mining engineering
53 school or be a graduate of an accredited engineering
54 school with a bachelor's degree in mining engineering
55 technology, electrical or mechanical engineering; and
56 have had twelve months' practical experience in,
57 an underground mine, all of which shall have been

58 on or at a working section or be a graduate of an ac-
59 credited college or university with an associate degree
60 in mining, electrical, mining engineering technology or
61 mechanical engineering and have had at least two years'
62 practical experience in an underground mine, which
63 shall include at least eighteen months' experience
64 on or at a working section of an underground mine.

65 (c) Until the first day of January, one thousand nine
66 hundred seventy-seven, in mines in which the operations
67 are so extensive that all the duties devolving upon the
68 mine foreman—fire boss cannot be discharged by one
69 man, competent persons having had at least three years'
70 experience in coal mines may be designated as assistants,
71 who shall act under the mine foreman—fire boss' instruc-
72 tions and the mine foreman—fire boss shall be responsible
73 for their conduct in the discharge of their duties under
74 such designation.

75 (d) Any person holding a mine foreman's certificate
76 issued by any other state may act in the capacity of mine
77 foreman—fire boss in any mine in this state until the next
78 regular mine foreman—fire boss examination held by
79 the department, but not to exceed a maximum of ninety
80 days.

81 (e) After the effective date of this act, all duties
82 heretofore performed by persons certified as mine fore-
83 man, assistant mine foreman or fire boss shall be per-
84 formed by persons certified as underground mine fore-
85 man—fire boss or an assistant underground mine foreman
86 —fire boss.

87 After the effective date of this act, every certificate
88 heretofore issued to an assistant mine foreman or fire boss
89 shall be deemed to be of equal value to a certificate issued
90 hereafter to an assistant mine foreman—fire boss, and
91 every certificate heretofore issued to a mine foreman shall
92 be deemed to be of equal value to a certificate issued
93 hereafter to a mine foreman—fire boss.

CHAPTER 70

(S. B. 454—By Mr. Gainer)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixty-three, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to coal mines; requiring reclamation bond of five thousand dollars per acre; using bond for reclamation of disturbed land not resulting in an operational deep mine; preventing new opening within three hundred feet of existing opening without reclamation; and providing for all reclamation to be under control of department of natural resources.

Be it enacted by the Legislature of West Virginia:

That section sixty-three, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. COAL MINES.

§22-2-63. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.

1 (a) After the effective date of this section, no mine
2 shall be opened or reopened unless prior approval has
3 been obtained from the director of the department of
4 mines, which approval shall not be unreasonably with-
5 held. The operator shall pay for such approval a fee of
6 ten dollars, which payment shall be tendered with the
7 operator's application for such approval: *Provided,*
8 That mines producing coal solely for the operator's
9 use shall be issued a permit without charge if coal
10 production will be less than fifty tons a year.

11 (b) Within thirty days after January first of each
12 year, the operator of each mine holding a certificate
13 evidencing approval of the director to open a mine,
14 shall apply for the extension of such certificate of ap-
15 proval for an additional year. Such approval, evidenced
16 by a certificate of the director, shall be granted as a
17 matter of right and without charge if, at the time such
18 application is made, the operator is in compliance with
19 the provisions of section seventy-two of this article.
20 Applications for extension of such certificates of ap-
21 proval not submitted within the time required shall be
22 processed as an application to open or reopen a
23 mine and shall be accompanied by a fee of ten dol-
24 lars.

25 (c) Certificates of approval issued pursuant to this
26 section shall not be transferable.

27 (d) The provisions of this section shall be printed
28 on the reverse side of every certificate issued here-
29 under.

30 (e) On or after the first day of July, one thousand
31 nine hundred seventy-six, no mine shall be opened or
32 reopened unless a surface disturbed reclamation bond
33 in the amount of five thousand dollars per acre is sub-
34 mitted to the department of mines for the removal of
35 unused surface structures, the sealing of abandoned
36 mine openings, and the reclamation of any land dis-
37 turbed that does not result in an operational deep mine.
38 The district mine inspector shall be contacted for a
39 preinspection of the area proposed for underground min-
40 ing prior to the issuance of any new opening approval.
41 The above-mentioned bond shall go into a separate fund
42 and must be submitted separate, when application is
43 made for the issuance of a deep-mine permit.

44 (f) On or after the first day of July, one thousand
45 nine hundred seventy-four, no mine shall be opened
46 or reopened where the total area of surface disturbance
47 at the outcrop of the coal seam is greater than four
48 hundred lineal feet and where coal is removed or to
49 be removed commercially or for commercial purposes

50 from this area unless a surface-mine reclamation bond
51 as required in articles six and six-a, chapter twenty of
52 the code be first obtained covering the area to be dis-
53 turbed.

54 (g) On or after the first day of July, one thousand nine
55 hundred seventy-six, no new opening approval shall be is-
56 sued in any mining operation for an opening within three
57 hundred feet of any existing active opening by any
58 operator unless reclamation of any disturbed land is
59 completed as required in article six of chapter twenty
60 of the code, if such opening is first approved by the
61 department of mines. All such restoration and recla-
62 mation of disturbed lands resulting from a deep-mine
63 operation shall be under the jurisdiction and control, and
64 subject to the provisions of the reclamation division of
65 the department of natural resources in accordance with
66 the requirements of article six of chapter twenty of the
67 code.

CHAPTER 71

(Com. Sub. for S. B. 157—By Mr. Galperin)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-k, two, nine, twelve and twelve-a, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-b, all relating to requirements for the reclamation of lands affected by oil and gas drilling; changes in drilling permit requirements; penalty under drilling permit requirements; and bond to assure that such reclamation is carried out.

Be it enacted by the Legislature of West Virginia:

That sections one-k, two, nine, twelve and twelve-a, article four, chapter twenty-two of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-b, all to read as follows:

ARTICLE 4. OIL AND GAS WELLS.

- §22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.
- §22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.
- §22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.
- §22-4-12. Supervision by department of mines over drilling, mining and reclamation operations; complaints; hearings; appeals.
- §22-4-12a. Special reclamation fund; fees.
- §22-4-12b. Reclamation requirements.

§22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.

- 1 It shall be unlawful for any well to be drilled, re-
2 drilled, deepened, fractured, stimulated, plugged, pres-
3 sured, converted, combined or physically changed to allow
4 the migration of fluid from one formation to another
5 unless a permit therefor has been issued by the depart-
6 ment. An application for any such permit shall be filed
7 with the deputy director and shall contain the following:
- 8 (a) The name and address of the well operator;
- 9 (b) The name and address of the owner of the surface
10 lands upon which the well is or may be located;
- 11 (c) The name and address of the agent of the well
12 operator, if any such agent is required to be designated
13 under the provisions of this section;
- 14 (d) The approximate depth to which the well is to be
15 drilled;
- 16 (e) The proposed casing program of such well in-
17 cluding the sizes of all such casing, the depth to which

18 all casing is to be run and the extent to which such casing
19 is to be cemented;

20 (f) The proposed method of reclamation which shall
21 comply with the requirements of section twelve-b of this
22 article; and

23 (g) Any other information which the deputy director
24 by rule or regulation may require.

25 If the well operator named in such application is a
26 corporation, partnership or a nonresident of the state of
27 West Virginia, then there shall be designated the name and
28 address of an agent for such operator who shall be the
29 attorney-in-fact for the operator and who shall be a
30 resident of the state of West Virginia upon whom notices,
31 orders or other communications issued pursuant to this
32 article or article five-a, chapter twenty, may be served,
33 and upon whom process may be served. Every well opera-
34 tor required to designate an agent under this section shall
35 within five days after the termination of such designation
36 notify the department of such termination and designate a
37 new agent.

38 The well owner or operator shall install the permit
39 number as issued by the deputy director in a legible and
40 permanent manner to the well upon completion of any
41 permitted work. The dimensions, specifications and man-
42 ner of installation shall be in accordance with the ad-
43 ministrative rules and regulations of the department.

44 For the purpose of ascertaining whether or not issuance
45 of any permit to drill, redrill, deepen, case, fracture,
46 stimulate, pressure, operate, plug, abandon, convert or
47 combine any well, or physically change any well to allow
48 the migration of fluid from one formation to another, will
49 contribute to an existing pollution problem, the deputy
50 director shall have the right and it shall be his duty to
51 consult with the director of the department of natural
52 resources. In the event the issuance of any such permit
53 may reasonably be expected to contribute to any such
54 existing pollution then the deputy director will not issue
55 such permit.

56 Any person who violates any provision of this section
57 shall be guilty of a misdemeanor, and, upon conviction
58 thereof, shall be punished by a fine not exceeding two
59 thousand dollars, or imprisonment in jail for not exceed-
60 ing twelve months, or both such fine and imprisonment.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

1 Before drilling for oil or gas, or before fracturing or
2 stimulating a well on any tract of land, the well operator
3 shall have a plat prepared by a licensed land surveyor or
4 registered engineer showing the district and county in
5 which the tract of land is located, the name and acreage
6 of the same, the names of the owners of adjacent tracts,
7 the proposed or actual location of the well determined by
8 survey, the courses and distances of such location from
9 two permanent points or landmarks on said tract and the
10 number to be given the well and the date of drilling
11 completion of a well when it is proposed that such well
12 be fractured and shall forward by registered mail a copy
13 of the plat to the department of mines. In the event the
14 tract of land on which the said well proposed to be drilled
15 or fractured is located is known to be underlaid with one
16 or more workable beds of coal, copies of the plat shall
17 be forwarded by registered mail to each and every coal
18 operator, if any, operating said beds of coal beneath said
19 tract of land, or within five hundred feet of the boundaries
20 of the same, who has mapped the same and filed his
21 maps as required by law. With each of such plats there
22 shall be enclosed a notice (form for which shall be
23 furnished on request by the department of mines) ad-
24 dressed to the department of mines and to each such
25 coal operator, if any, at their respective addresses, in-
26 forming them that such plat and notice are being mailed
27 to them respectively by registered mail, pursuant to the
28 requirements of this article. If no objections are made,
29 or are found by the department, to such proposed loca-
30 tion or proposed fracturing within ten days from receipt

31 of such plat and notice by the department of mines, the
32 same shall be filed and become a permanent record of
33 such location or fracturing subject to inspection at any
34 time by any interested person, and the department may
35 forthwith issue to the well operator a permit reciting
36 the filing of such plat, that no objections have been made
37 by the coal operators, if any, or found thereto by the
38 department, and authorizing the well operator to drill
39 at such location, or to fracture the well. Unless the de-
40 partment has objections to such proposed location or
41 proposed fracturing or stimulating, such permit may be
42 issued prior to the expiration of such ten-day period upon
43 the obtaining by the well operator of the consent in
44 writing of the coal operator or operators to whom copies
45 of the plat and notice shall have been mailed as herein
46 required, and upon presentation of such written consent
47 to the department. The notice above provided for may be
48 given to the coal operator by delivering or mailing it as
49 above to any agent or superintendent in actual charge of
50 mines.

51 A permit to drill, or to fracture or stimulate an oil
52 or gas well, shall not be issued unless the application
53 therefor is accompanied by a bond of the operator in the
54 sum of two thousand five hundred dollars, payable to
55 the state of West Virginia, with a corporate bonding or
56 surety company authorized to do business in this state
57 as surety thereon, conditioned on full compliance with all
58 laws, rules and regulations relating to the drilling, re-
59 drilling, deepening, casing, plugging, abandonment and
60 reclamation of wells and for furnishing such reports and
61 information as may be required by the department:
62 *Provided*, That when such operator makes or has made
63 application for permits to drill a number of wells or
64 fracture or stimulate a well or wells the operator may
65 in lieu of furnishing a separate bond furnish a blanket
66 bond in the sum of fifteen thousand dollars, payable to
67 the state of West Virginia, with a corporate bonding or
68 surety company authorized to do business in this state
69 as surety thereon, and conditioned as aforesaid: *Provided*,
70 *however*, That in lieu of corporate surety on a separate
71 or blanket bond, as the case may be, the operator may

72 elect to deposit with the deputy director for oil and gas
73 cash or the following collateral securities or any combina-
74 tion thereof: (1) Bonds of the United States or agency
75 thereof, or those guaranteed by, or for which the credit
76 of the United States or agency thereof is pledged for
77 the payment of the principal and interest thereof; (2)
78 direct general obligation bonds of this state, or any other
79 state, or territory of the United States, or the District of
80 Columbia, unconditionally guaranteed as to the principal
81 and interest by such other state or territory of the United
82 States, or the District of Columbia if such other state,
83 territory, or the District of Columbia has the power to
84 levy taxes for the payment of the principal and interest
85 of such securities, and if at the time of the deposit such
86 other state, territory, or the District of Columbia is not
87 in default in the payment of any part of the principal or
88 interest owing by it upon any part of its funded indebted-
89 ness; (3) direct general obligation bonds of any county,
90 district, city, town, village, school district or other political
91 subdivision of this state issued pursuant to law and pay-
92 able from ad valorem taxes levied on all the taxable
93 property located therein, that the total indebtedness after
94 deducting sinking funds and all debts incurred for self-
95 sustaining public works does not exceed five percent of
96 the assessed value of all taxable property therein at the
97 time of the last assessment made before the date of
98 such deposit, and that the issuer has not, within five
99 years prior to the making thereof, been in default for
100 more than ninety days in the payment of any part of
101 the principal or interest on any debt evidenced by its
102 bonds; (4) revenue bonds issued by this state or any
103 agency of this state when such bonds are payable from
104 revenues or earnings specifically pledged for the pay-
105 ment of principal and interest, and a lawful sinking fund
106 or reserve fund has been established and is being main-
107 tained for the payment of such bonds; (5) revenue bonds
108 issued by a municipality in this state for the acquisition,
109 construction, improvement or extension of a waterworks
110 system, or a sewerage system, or a combined water-
111 works and sewerage system, when such bonds are pay-
112 able from revenue or earnings specifically pledged for

113 the payment of principal and interest, and a lawful
114 sinking fund or reserve fund has been established and
115 is being maintained for the payment of such bonds;
116 (6) revenue bonds issued by a public service board of
117 a public service district in this state for the acquisition,
118 construction, improvement or extension of any public
119 service properties, or for the reimbursement or payment
120 of the costs and expenses of creating the district, when
121 such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest,
122 and a lawful sinking fund or reserve fund has been
123 established and is being maintained for the payment of
124 such bonds; (7) revenue bonds issued by a board of
125 trustees of a sanitary district in this state for the corporate purposes of such district, when such bonds are
126 payable from revenue or earnings specifically pledged
127 for the payment of principal and interest, and a lawful
128 sinking fund or reserve fund has been established and
129 is being maintained for the payment of such bonds; and
130 (8) bonds issued by a federal land bank or home owners'
131 loan corporation. The cash deposit or market value, or
132 both, of the collateral securities shall be equal to or
133 greater than the penalty of the separate or blanket bond,
134 as the case may be. Upon receipt of any such deposit
135 or cash or collateral securities, the deputy director for
136 oil and gas shall immediately deliver the same to the
137 treasurer of the state of West Virginia. The treasurer
138 shall determine whether any such securities satisfy the
139 requirements of this section. If the securities are approved they shall be accepted by the treasurer. If the
140 securities are not approved, they shall be rejected and
141 returned to the operator and no permit shall be issued
142 until a corporate surety bond is filed or cash or proper
143 collateral securities are filed in lieu of such surety. The
144 treasurer shall hold any cash or securities in the name
145 of the state in trust for the purposes for which the deposit was made. The operator shall be entitled to all
146 interest and income earned on the collateral securities
147 filed by such operator so long as the operator is in full
148 compliance with all laws, rules and regulations relating
149 to the drilling, redrilling, deepening, casing, plugging,
150
151
152
153

154 abandonment and reclamation of wells and for furnishing
155 such reports and information as may be required by the
156 department. The operator making the deposit shall be
157 entitled from time to time to receive from the treasurer,
158 upon the written order of the deputy director for oil
159 and gas, the whole or any portion of such securities upon
160 depositing with the treasurer in lieu thereof cash equal
161 to or greater than the penalty of the bond, or other
162 approved securities of the classes herein specified having
163 a market value equal to or greater than the penalty of
164 the bond, or a corporate surety bond.

165 Any such bond shall remain in force until released by
166 the department and the department shall release the
167 same when it is satisfied the conditions thereof have been
168 fully performed. Upon the release of any such bond,
169 any cash or collateral securities deposited shall be re-
170 turned by the deputy director for oil and gas to the
171 operator who deposited same.

172 If any of the requirements of this article or rules and
173 regulations promulgated pursuant thereto or the orders
174 of the deputy director for oil and gas have not been
175 complied with within the time limit set by the violation
176 notice as defined in sections one-g, one-h and one-i, article
177 four, chapter twenty-two of this code the performance
178 bond shall then be forfeited.

179 When any bond is forfeited pursuant to the provisions
180 of this article or rules and regulations promulgated pur-
181 suant thereto the deputy director shall give notice to the
182 attorney general who shall collect the forfeiture without
183 delay.

184 All forfeitures shall be deposited in the treasury of
185 the state of West Virginia in the special reclamation fund
186 as defined in section twelve-a, article four, chapter
187 twenty-two of this code.

**§22-4-9. Plugging, abandonment and reclamation of well;
notice of intention; performance bonds or securities
in lieu thereof; affidavit showing time and manner.**

1 All dry or abandoned wells or wells presumed to be
2 abandoned under the provisions of section seven of this

3 article shall be plugged and reclaimed in accordance
4 with this section and the other provisions of this article
5 and in accordance with the rules and regulations promul-
6 gated by the deputy director.

7 Prior to the commencement of plugging operations
8 and the abandonment of any well, the well operator
9 shall either (a) notify, by registered or certified mail,
10 the department of mines and the coal operator or
11 operators, if any, to whom notices are required to be
12 given by section two of this article and the coal oper-
13 ator or operators to whom notices are required to be
14 given by section two-a of this article of its inten-
15 tion to plug and abandon any such well (using such
16 form of notice as the department may provide), giving
17 the number of the well and its location and fixing the
18 time at which the work of plugging and filling will be
19 commenced, which time shall be not less than five days
20 after the day on which such notice so mailed is
21 received or in due course should be received by the
22 department of mines, in order that a representative or
23 representatives of the department and the coal oper-
24 ator or operators, if any, or of both, may be present at
25 the plugging and filling of the well: *Provided*, That
26 whether such representatives appear or do not appear,
27 the well operator may proceed at the time fixed to plug
28 and fill the well in the manner hereinafter described,
29 or (b) first obtain the written approval of the depart-
30 ment of mines and the coal operator or operators, if
31 any, to whom notices are required to be given by sec-
32 tion two of this article and the coal operator or operators
33 to whom notices are required to be given by section
34 two-a of this article, or (c) in the event the well to
35 be plugged and abandoned is one on which drilling
36 or reworking operations have been continuously pro-
37 gressing pursuant to authorization granted by the de-
38 partment, first obtain the verbal permission of the deputy
39 director for oil and gas or his designated representative
40 to plug and abandon such well, except that the well
41 operator shall, within a reasonable period not to
42 exceed five days after the commencement of such plug-

43 ging operations, give the written notices required by
44 subdivision (a) above.

45 No well shall be plugged or abandoned unless prior
46 to the commencement of plugging operations and the
47 abandonment of any well the department is furnished
48 a bond of the operator in the sum of two thousand five
49 hundred dollars, payable to the state of West Virginia,
50 with a corporate bonding or surety company autho-
51 rized to do business in this state as surety thereon, con-
52 ditioned on full compliance with all laws, rules and reg-
53 ulations relating to the casing, plugging, abandonment
54 and reclamation of wells and for furnishing such reports
55 and information as may be required by the depart-
56 ment. When a number of wells are involved, the oper-
57 ator may in lieu of furnishing a separate bond furnish
58 a blanket bond in the sum of fifteen thousand dollars,
59 payable to the state of West Virginia, with a corporate
60 bonding or surety company authorized to do business
61 in this state as surety thereon, and conditioned as afore-
62 said. In lieu of corporate surety on a separate or blanket
63 bond, as the case may be, the operator may elect
64 to deposit with the deputy director for oil and gas
65 cash or collateral securities as specified in section two
66 of this article. All of the provisions of section two deal-
67 ing with cash or collateral securities in lieu of corporate
68 surety shall be fully applicable hereto except for the
69 condition of the bond with respect to which the operator
70 must be in full compliance in order to be entitled to
71 the interest and income earned on such securities. The
72 operator shall be entitled to such interest and income
73 under this section so long as the operator is in full com-
74 pliance with all laws, rules and regulations relating to
75 the casing, plugging, abandonment and reclamation of
76 wells and for furnishing such reports and informa-
77 tion as may be required by the department. Any such
78 bond shall remain in force until released by the depart-
79 ment and the department shall release the same when
80 it is satisfied the conditions thereof have been fully
81 performed. Notwithstanding the foregoing provisions,
82 any operator who, in accordance with section two of
83 this article, has furnished a separate bond, which has

84 not been released by the department, for the drilling,
85 converting or drilling for the introduction of liquids,
86 for the disposal of sewage, industrial waste or other
87 waste or the effluent therefrom, or introducing pressure,
88 whether liquid or gas, or introducing liquid for the
89 purposes provided for in section ten-a of this article
90 or fracturing of the well it is now proposed be plugged
91 and abandoned, or who, in accordance with the provi-
92 sions of said section two of this article, has furnished a
93 blanket bond which has not been released by the de-
94 partment shall not be required by this section to furnish
95 any other bond. When the plugging, filling and reclama-
96 tion of a well have been completed, an affidavit, in trip-
97 licate, shall be made (on a form to be furnished by the
98 department) by two experienced men who participated
99 in the work, the deputy director for oil and gas or his
100 designated representative, in which affidavit shall be
101 set forth the time and manner in which the well was
102 plugged and filled and the land reclaimed. One copy
103 of this affidavit shall be retained by the well operator,
104 another (or true copies of same) shall be mailed to the
105 coal operator or operators, if any, and the third to the
106 department of mines.

**§22-4-12. Supervision by department of mines over drilling,
mining and reclamation operations; complaints;
hearings; appeals.**

1 The department shall exercise supervision over the
2 drilling, casing, plugging, filling and reclamation of all
3 wells and of all mining operations in close proximity to
4 any well and shall have such access to the plans, maps and
5 other records and to the properties of the well operators
6 and coal operators as may be necessary or proper for this
7 purpose, and, either as the result of its own investigations
8 or pursuant to charges made by any well operator or coal
9 operator, the department may itself enter, or shall permit
10 any aggrieved person to file before it, a formal complaint
11 charging any well operator with not drilling or casing, or
12 not plugging or filling, or reclaiming any well in ac-
13 cordance with the provisions of this article, or charging
14 any coal operator with conducting mining operations in

15 proximity to any well contrary to the provisions of this
16 article, or to the order of the department. True copies of
17 any such complaints shall be served upon or mailed by
18 registered mail to any person so charged, with notice of the
19 time and place of hearing, of which the operator or
20 operators so charged shall be given at least five days'
21 notice. At the time and place fixed for hearing, full
22 opportunity shall be given any person so charged or
23 complaining to be heard and to offer such evidence as
24 desired, and after a full hearing, at which the department
25 may offer in evidence the results of such investigations as
26 it may have made, the department shall make its findings
27 of fact and enter such order as in its judgment is just and
28 right and necessary to secure the proper administration
29 of this article, and, if it deems necessary, restraining the
30 well operator from continuing to drill or case any well or
31 from further plugging, filling or reclaiming the same,
32 except under such conditions as the department may im-
33 pose in order to insure a strict compliance with the provi-
34 sions of this article relating to such matters, or restraining
35 further mining operations in proximity to any well, except
36 under such conditions as the department may impose.
37 From any such order an appeal, naming the department
38 as a respondent, may be taken by the operator or opera-
39 tors so restrained, within ten days of notice of entry of the
40 same, to the circuit court of the county in which the well
41 involved is located, and the department or complainant or
42 complainants, or both, may, in case such order is disobey-
43 ed, apply at any time to such circuit court for a decree
44 enforcing the same.

§22-4-12a. Special reclamation fund; fees.

1 In addition to any other fees required by the provisions
2 of this article, every applicant for a permit to drill a
3 well shall, before the permit is issued, pay to the deputy
4 director for oil and gas a special reclamation fee of one
5 hundred dollars for each well to be drilled. Such special
6 reclamation fee shall be paid at the time the application
7 for a drilling permit is filed with the deputy director
8 and the payment of such reclamation fee shall be a con-
9 dition precedent to the issuance of said permit.

10 There is hereby created within the treasury of the
11 state of West Virginia a special fund to be known as the
12 oil and gas reclamation fund, and the deputy director shall
13 deposit with the state treasurer to the credit of such
14 special fund all special reclamation fees collected. The
15 proceeds of any bond forfeited under the provisions of
16 this article shall inure to the benefit of and shall be
17 deposited in such oil and gas reclamation fund.

18 The oil and gas reclamation fund shall be administered
19 by the director of the department of mines. The deputy
20 director for oil and gas shall cause to be prepared plans
21 for the reclaiming and plugging of abandoned wells which
22 have not been reclaimed or plugged or which have been
23 improperly reclaimed or plugged. The director of the
24 department of mines, as funds become available in the oil
25 and gas reclamation fund, shall reclaim and properly plug
26 wells in accordance with said plans and specifications and
27 in accordance with the provisions of this article relating
28 to the reclaiming and plugging of wells and all rules and
29 regulations promulgated thereunder. Such funds may also
30 be utilized for the purchase of abandoned wells, where
31 such purchase is necessary, and for the reclamation of
32 such abandoned wells, and for any engineering, adminis-
33 trative and research costs as may be necessary to properly
34 effectuate the reclaiming and plugging of all wells,
35 abandoned or otherwise.

36 The director may avail himself of any federal funds
37 provided on a matching basis that may be made available
38 for the purpose of reclaiming or plugging any wells.

39 The director shall make an annual report to the gov-
40 ernor and to the Legislature setting forth the number of
41 wells reclaimed or plugged through the use of the oil and
42 gas reclamation fund provided for herein. Such report
43 shall identify each such reclamation and plugging project,
44 state the number of wells reclaimed or plugged thereby,
45 show the county wherein such wells are located and shall
46 make a detailed accounting of all expenditures from the
47 oil and gas reclamation fund.

48 All wells shall be reclaimed or plugged by contract

49 entered into by the director on a competitive bid basis as
50 provided for under the provisions of article three, chapter
51 five-a of this code and the rules and regulations promul-
52 gated thereunder.

§22-4-12b. Reclamation requirements.

1 The operator of a well shall reclaim the land surface
2 within the area disturbed in siting, drilling, completing or
3 producing the well in accordance with the following
4 requirements:

5 (a) Within six months after the completion of a
6 producing well, the operator shall fill all the pits for
7 containing muds, cuttings, salt water and oil that are not
8 needed for production purposes, or are not required or
9 allowed by state or federal law or rule or regulation, and
10 remove all concrete bases, drilling supplies and drilling
11 equipment. Within such period, the operator shall grade
12 or terrace and plant, seed or sod the area disturbed that is
13 not required in production of the well where necessary to
14 bind the soil and prevent substantial erosion and sedi-
15 mentation. No pit may be used for the ultimate disposal
16 of salt water. Salt water and oil shall be periodically
17 drained or removed, and properly disposed of, from any pit
18 that is retained so the pit is kept reasonably free of salt
19 water and oil.

20 (b) Within six months after a well that has produced
21 oil or gas is plugged, or after the plugging of a dry hole,
22 the operator shall remove all production and storage
23 structures, supplies and equipment, and any oil, salt water
24 and debris, and fill any remaining excavations. Within
25 such period, the operator shall grade or terrace and plant,
26 seed or sod the area disturbed where necessary to bind the
27 soil and prevent substantial erosion and sedimentation.

28 The deputy director may, upon written application by
29 an operator showing reasonable cause, extend the period
30 within which reclamation shall be completed, but not to
31 exceed a further six-month period.

32 If the deputy director refuses to approve a request for
33 extension, he shall do so by order.

CHAPTER 72

(H. B. 1518—By Mr. Teets)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and twelve, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to motorboating; requiring licensing of motorboats propelled by motors of less than three horsepower; fee for agents issuing motorboat licenses; period licenses shall be valid; date of report to assessor of persons owning vessels; authorizing director to issue six months license; fee.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

PART II. MOTORBOATING.

§20-7-11. Motorboats and other terms defined.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; issuing agents; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

PART II. MOTORBOATING.

§20-7-11. Motorboats and other terms defined.

1 As used in this section and subsequent sections of this
2 article, unless the context clearly requires a different meaning:

3 (1) "Vessel" means every description of watercraft, other
4 than a seaplane on the water, used or capable of being used
5 as a means of transportation on water;

6 (2) "Motorboat" means any vessel propelled by an electrical,
7 steam, gas, diesel or other fuel propelled or driven motor,

8 whether or not such motor is the principal source of propulsion,
9 but shall not include a vessel which has a valid marine docu-
10 ment issued by the bureau of customs of the United States
11 government or any federal agency successor thereto; and

12 (3) "Owner" means a person, other than a lienholder,
13 having the property in or title to a motorboat. The term
14 includes a person entitled to the use or possession of a
15 motorboat subject to an interest in another person, reserved
16 or created by agreement and securing payment or performance
17 of an obligation, but the term excludes a lessee under a lease
18 not intended as security.

**§20-7-12. Motorboat identification numbers required; application
for numbers; fee; displaying; reciprocity; change of
ownership; conformity with United States regulations;
issuing agents; records; renewal of certificate; transfer
of interest, abandonment, etc.; change of address;
unauthorized numbers; information to be furnished
assessors.**

1 Every motorboat, as herein defined, operating upon public
2 waters within the territorial limits of this state, shall be
3 numbered as herein provided:

4 (a) The owner of each motorboat requiring numbering by
5 this state shall file an application for a number with the
6 director on forms approved by him. The application shall be
7 signed by the owner of the motorboat and shall be accom-
8 panied by a fee of five dollars if propelled by a motor
9 of three or more horsepower. There shall be no fee for
10 motorboats propelled by motors of less than three horse-
11 power. All such fees shall be deposited in the state treasury
12 and shall be credited to the department of natural resources
13 and shall be used and paid out, upon order of the director,
14 solely for the state boating program. Upon receipt of the
15 application in approved form, the director shall enter the
16 same upon the records of his office and issue to the applicant
17 a number awarded to the motorboat and the name and
18 address of the owner. The owner shall paint on or attach
19 to each side of the bow of the motorboat the identification
20 number in such manner as may be prescribed by rules and

21 regulations of the director in order that it may be clearly
22 visible. The number shall be maintained in legible condition.
23 The certificate of number shall be pocket size and shall be
24 available at all times for inspection on the motorboat for
25 which issued, whenever such motorboat is in operation.

26 (b) The owner of any motorboat already covered by a
27 number in full force and effect which has been awarded to it
28 pursuant to then operative federal law or a federally ap-
29 proved numbering system of another state shall record the
30 number prior to operating the motorboat on the waters of
31 this state in excess of the sixty-day reciprocity period provided
32 for in section fourteen of this article. Such recordation shall
33 be in the manner and pursuant to procedure required for the
34 award of a number under subdivision (a) of this section,
35 except that no additional or substitute number shall be issued.

36 (c) Should the ownership of a motorboat change, a new
37 application form with fee shall be filed with the director
38 and a new certificate of number shall be awarded in the
39 same manner as provided for in an original award of number.

40 (d) In the event that an agency of the United States
41 government shall have in force an overall system of identifica-
42 tion numbering for motorboats within the United States, the
43 numbering system employed pursuant to this article by the
44 commission shall be in conformity therewith.

45 (e) The director may designate as issuing agent the clerk
46 of any county commission and such other persons in each
47 county as he deems advantageous to provide for the issuance
48 of certificates of number in accordance with the provisions
49 of this article. For services rendered in issuing such certifi-
50 cates, and collecting and paying over such numbering fees,
51 each issuing agent, other than a state or county official, shall
52 charge and retain an additional fee of fifty cents from
53 the person obtaining the certificate of number. Every such
54 issuing agent, unless already under bond with the director
55 as an agent for the collection of its moneys, shall file a bond
56 with the director, payable to the state of West Virginia, in an
57 amount to be fixed by the director at not more than one
58 thousand dollars, before the supply of certificates of number

59 is delivered to him, conditioned upon the faithful perform-
60 ance of his obligation to issue certificates only in conformance
61 with the provisions of this article and the regulation of the di-
62 rector. Each issuing agent, on the first day of each month, shall
63 remit to the director all moneys collected for the director dur-
64 ing the preceding month, and shall accompany his remittance
65 with a report showing the name of the county, the names and
66 addresses of the persons paying the same, and the date of re-
67 ceipt thereof.

68 (f) All records of the director made or kept pursuant to this
69 section shall be public records.

70 (g) Such license shall be valid only until the last day of
71 December. If at the expiration of that date ownership has re-
72 mained unchanged, such owner shall, upon application and
73 payment of the proper annual fee, be granted a renewal of
74 such certificate of number for an additional one-year period.

75 (h) The owner shall furnish the director notice of the trans-
76 fer of all or any part of his interest, other than the creation of
77 a security interest, in a motorboat numbered in this state
78 pursuant to subdivisions (a) and (b) of this section, or of the
79 destruction or abandonment of such motorboat, within fifteen
80 days thereof. Such transfer, destruction or abandonment shall
81 terminate the certificate of number for such motorboat, except
82 that in the case of a transfer of a part interest which does not
83 affect the owner's right to operate such motorboat, such trans-
84 fer shall not terminate the certificate of number.

85 (i) Any holder of a certificate of number shall notify the di-
86 rector within fifteen days if his address no longer conforms to
87 the address appearing on the certificate and shall, as a part
88 of such notification, furnish the director with his new address.
89 The director may provide in his rules and regulations for the
90 surrender of the certificate bearing the former address and its
91 replacement with a certificate bearing the new address or for
92 the alteration of an outstanding certificate to show the new
93 address of the holder.

94 (j) No number other than the number awarded to a
95 motorboat or granted reciprocity pursuant to this article

96 shall be painted, attached or otherwise displayed on either side
97 of the bow of such motorboat.

98 (k) It shall be the duty of the director on or before Feb-
99 ruary twenty-eight of each year, commencing with the year
100 one thousand nine hundred seventy-seven, to forward to the
101 assessor of each county a list of the names and addresses
102 of all persons, firms and corporations owning vessels and
103 operating the same or other boats registered with the director
104 under the provisions of this article. In furnishing this in-
105 formation to each county assessor, the director shall include
106 in his report such information as is made available to him
107 in the reports and registrations he receives as to make,
108 model, value and cost price of such vessels and other equip-
109 ment required to be registered for use by said owner or
110 operator thereof under the provisions of this article: *Provided,*
111 That the director need not furnish such information to the
112 assessor if the cost price of such vessel does not exceed two
113 hundred dollars or the cost of the motor does not exceed
114 one hundred seventy-five dollars. In order to deal equitably
115 with overlapping license periods, the director may issue a
116 six months' license from the period July, one thousand nine
117 hundred seventy-six through December, one thousand nine
118 hundred seventy-six. The fee shall be one half of the annual
119 fee.

120 (l) No person shall operate an unlicensed motorboat upon
121 any waters of this state without first acquiring such certificate
122 of number or license as required by law.

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CHAPTER 73

(S. B. 44—By Mr. Beall)

[Passed March 12, 1976; in effect July 1, 1976.]

Disapproved by the Governor, and repassed notwithstanding his objections.]

AN ACT to amend and reenact section seventeen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing sheriffs to issue renewals of Class A and G

vehicle registrations; the procedures for their issuance; and providing for a service fee.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-17. Application for and renewal of registration; sheriffs authorized to issue renewals of registration for certain vehicles.

1 Application for renewal of a vehicle registration shall
2 be made by the vehicle owner by proper application and
3 payment of the taxes and registration fees provided by
4 law.

5 The department may receive applications for renewal
6 of any vehicle registration and each sheriff may receive
7 applications from residents in his county for renewal of
8 any Class A or G vehicle registration. The department
9 and each sheriff shall issue the renewals of registration
10 each receives, respectively, in accordance with all of the
11 provisions in this article pertaining to renewal of vehicle
12 registration including, but not limited to, the payment of
13 the taxes and fees required thereunder.

14 Each sheriff may charge a service fee of one dollar for
15 each renewal of a Class A or G vehicle registration he
16 issues which he shall pay into the county general fund.

17 On the first day of each month, each sheriff shall pay
18 over to the commissioner all fees he collected during the
19 preceding month for renewal of Class A and G vehicle
20 registrations, except his service fees. Such payment shall
21 be accompanied by a report showing the name of the
22 county, the name and address of the person who obtained
23 the registration and paid the registration fee therefor, the
24 vehicle registered, the registration number, the date the
25 registration was issued, the signature of the sheriff and
26 any other information the commissioner may reasonably

27 require in order to maintain the functions and records of
28 the department. The commissioner shall deposit all fees
29 he receives from the sheriffs for renewal of Class A and G
30 vehicle registrations in the state treasury and credited
31 to the state road fund as provided in section twenty-one,
32 article two of this chapter.

33 The commissioner shall provide each sheriff with the
34 necessary forms, supplies, registration plates, registration
35 decals and instructions necessary to enable them to per-
36 form the duties and functions specified in this section.

37 No person may display upon a vehicle a new registra-
38 tion plate or registration decal prior to the first day of
39 the month preceding the new registration period.

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CHAPTER 74

(Com. Sub. for H. B. 778—By Mr. Teets)

[Passed February 28, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vehicles exempt from payment of registration fees and removing distinction between incorporated and unincorporated volunteer fire departments receiving the exemption; and providing an exemption for certain ambulances and other emergency rescue vehicles.

Be it enacted by the Legislature of West Virginia:

That section eight, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-8. Vehicles exempt from payment of registration fees.

1 The following specified vehicles shall be exempt from the
2 payment of any registration fees:

3 (1) Any vehicle owned or operated by the United States
4 government, the state of West Virginia or any of their political
5 subdivisions. The proper representative of the United States
6 government, the state of West Virginia or any of their political
7 subdivisions shall make, or cause to be made, on the form
8 provided for that purpose, an application for registration for
9 such vehicle so owned or operated, and the registration plate
10 or plates issued for such vehicle shall be displayed or caused
11 to be displayed as provided in this chapter.

12 (2) Any fire vehicle owned or operated by a volunteer fire
13 department organized for protection of community property.

14 (3) Any ambulance or any other emergency rescue vehicle
15 owned or operated by a nonprofit, charitable organization, and
16 used exclusively for charitable purposes.

17 (4) Any vehicle owned by a disabled veteran under the pro-
18 visions of Public Law 663 of the 79th Congress of the United
19 States, or Public Law 187 of the 82nd Congress of the United
20 States, or Public Law 77 of the 90th Congress of the United
21 States, but this exemption shall not apply to vehicles used for
22 hire which are owned by disabled veterans.

CHAPTER 75

(S. B. 144—By Mr. Willis and Mr. Hinkle)

[Passed March 1, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making it an offense for any person to drive any vehicle in this state while under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving; making it an offense for the owner of any vehicle to knowingly permit his vehicle to be driven in this state by any other person who is a habitual user of or under the influence of any controlled substance or who is under the influence

of any other drug to a degree which renders him incapable of safely driving or who is under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving; granting a person convicted for the first offense of driving a vehicle in this state while under the influence of alcohol or while a habitual user of or under the influence of a controlled substance or other drugs or combinations thereof which renders him incapable of safely driving or of having permitted another person to drive his vehicle in this state while such person was under the influence of such substances in the same manner and to the same degree the option to attend an alcohol and drug countermeasure school conducted under the jurisdiction and supervision of the department of mental health with advice and consultation from the department of public safety; providing that a person who elects to attend the school may be issued a temporary operator's or chauffeur's license which he may use for certain limited purposes; providing for restoration of such person's operator's or chauffeur's license upon completion of the six-month revocation period without any limitation as to use; authorizing the division of alcoholism and drug abuse of the department of mental health to collect from each offender who attends an alcohol and drug countermeasure school a fee not to exceed fifty dollars to pay the administrative costs thereof; and setting forth the procedures to be followed in the implementation and administration of such provisions of law.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs.

- 1 (a) It is unlawful and punishable as provided in sub-
- 2 sections (c), (d) and (e) of this section for any person
- 3 to drive any vehicle in this state while:

4 (1) He is under the influence of alcohol;

5 (2) He is a habitual user of or under the influence of
6 any controlled substance or he is under the influence of
7 any other drug to a degree which renders him incapable
8 of safely driving; or

9 (3) He is under the combined influence of alcohol and
10 any controlled substance or any other drug to a degree
11 which renders him incapable of safely driving.

12 The fact that any person charged with a violation of
13 subsection (a) or (b) of this section is or has been legally
14 entitled to use alcohol, a controlled substance or a drug
15 shall not constitute a defense against any charge of
16 violating subsection (a) or (b) of this section.

17 For purposes of this section, the term "controlled
18 substance" shall have the meaning ascribed to it in chap-
19 ter sixty-a of this code.

20 (b) It is unlawful and punishable as provided in sub-
21 sections (c), (d) and (e) of this section for the owner
22 of any vehicle to knowingly permit his vehicle to be
23 driven in this state by any other person who is under
24 the influence of alcohol, or who is a habitual user of or
25 under the influence of any controlled substance or who
26 is under the influence of any other drug to a degree or
27 in the manner set forth in subdivisions (1), (2) and (3)
28 of subsection (a) of this section.

29 (c) A person violating any provisions of subsection
30 (a) or (b) of this section shall, for the first offense, be
31 guilty of a misdemeanor, and, upon conviction thereof,
32 shall be imprisoned in the county jail for a period of
33 not less than twenty-four hours nor more than six months
34 and, in addition to such mandatory jail sentence, such
35 person may be fined not less than fifty nor more than
36 one hundred dollars; and, in every case of such convic-
37 tion, such convicted person's operator's or chauffeur's
38 license shall be revoked for a period of six months. The
39 court which convicted such person shall require him to
40 surrender his operator's or chauffeur's license to it and
41 the court shall cause such license and a certified abstract
42 of the judgment on such conviction to be sent to the

43 department as provided in section four, article three,
44 chapter seventeen-b of this code.

45 A person convicted for a first offense under subsection
46 (a) or (b) of this section and if the records of the de-
47 partment do not disclose that he had been previously
48 convicted for such an offense shall be granted the option
49 to attend an alcohol and drug countermeasure school
50 conducted under the jurisdiction and supervision of the
51 division of alcoholism and drug abuse of the department
52 of mental health. Such person who elects to attend the
53 school shall have a temporary operator's or chauffeur's
54 license issued to him by the department upon it receiving
55 certification from the division of alcoholism and drug
56 abuse of the department of mental health that the person
57 is enrolled in a course of instruction in the school. Any
58 person who is issued such temporary operator's or chauffeur's
59 license may use it only for the limited purpose of
60 driving to and from the school and to and from his
61 regular place of education or employment, or both, and
62 to drive any vehicle required as a necessary part of his
63 employment. If any person who has been issued such
64 temporary operator's or chauffeur's license fails to attend
65 any session of an alcohol and drug countermeasure school
66 in which he is enrolled without proper reason or excuse,
67 the division of alcoholism and drug abuse of the depart-
68 ment of mental health shall promptly notify the depart-
69 ment and the department shall revoke that person's
70 temporary operator's or chauffeur's license immedi-
71 ately.

72 Such person shall have his operator's or chauffeur's
73 license restored to him by the department upon the ex-
74 piration of the six-month period for which his operator's
75 or chauffeur's license was revoked, without any limitation
76 as to use, upon his compliance with all applicable re-
77 quirements of state law and the rules and regulations
78 promulgated thereunder by the commissioner.

79 A person convicted for a first offense under subsection
80 (a) or (b) of this section shall receive written notifica-
81 tion from the department of the provisions of this section
82 and complete information regarding the revocation and

83 restoration of his operator's or chauffeur's license and the
84 alcohol and drug countermeasure school.

85 At the time a person is convicted for a first offense
86 under subsection (a) or (b) of this section, the court
87 shall inform the division of alcoholism and drug abuse
88 of the department of mental health of such conviction
89 and the division shall notify the person of when and
90 where he can enroll and attend an alcohol and drug
91 countermeasure school.

92 Alcohol and drug countermeasure schools shall be con-
93 ducted in accordance with rules and regulations promul-
94 gated by the director of the department of mental health
95 in accordance with the provisions of chapter twenty-
96 nine-a of this code. In promulgating such rules and regu-
97 lations, the director shall establish and publish a curric-
98 ulum to be applied uniformly throughout the state for
99 the course taught in such schools to persons convicted
100 for a first offense under subsection (a) or (b) of this
101 section which shall consist of not less than twenty hours
102 of instruction and training to be conducted during a
103 period not to exceed six months. The department of
104 public safety shall advise and consult with the division
105 of alcoholism and drug abuse of the department of mental
106 health regarding the manner in which the schools are
107 conducted and the curriculum of such course. The divi-
108 sion of alcoholism and drug abuse of the department of
109 mental health is hereby authorized to collect from each
110 such convicted person who attends an alcohol and drug
111 countermeasure school it conducts a fee not to exceed
112 fifty dollars. All such fees shall be deposited in the state
113 treasury in a special fund to be used only to pay admin-
114 istrative costs necessarily incurred in providing such
115 schools.

116 (d) A person violating any provision of subsection
117 (a) or (b) of this section shall, for the second offense
118 occurring within a five-year period, be guilty of a mis-
119 demeanor, and, upon conviction thereof, shall be im-
120 prisoned in the county jail for a period of not less than
121 six months nor more than one year, which sentence shall
122 not be subject to probation; and whenever the records

123 of the department disclose that a conviction is the second
124 such conviction of such person within a period of five
125 years for a violation of subsection (a) or (b) of this
126 section, his operator's or chauffeur's license shall be re-
127 voked by the commissioner for a period of ten years,
128 unless it is restored by the department as hereinafter
129 provided. Whenever the commissioner, after full investi-
130 gation, shall find that the character of any person who
131 was convicted of a second offense under subsection
132 (a) or (b) of this section and the circumstances at the
133 time indicate that he is not likely to repeat his offense
134 again and that the public good does not require that his
135 license be longer revoked, the commissioner may if it
136 is deemed advisable restore such license at any time more
137 than five years after the date on which it was revoked.

138 (e) A person violating any provision of subsection
139 (a) or (b) of this section shall, for the third or any
140 subsequent offense occurring within a five-year period,
141 be guilty of a felony, and, upon conviction thereof, shall
142 be imprisoned in the penitentiary for not less than one
143 nor more than three years; and whenever the records of
144 the department disclose that a conviction is the third
145 such or any subsequent conviction of such person within
146 a period of five years for a violation of subsection (a) or
147 (b) of this section, his operator's or chauffeur's license
148 shall be revoked by the commissioner for a period of
149 ten years and indefinitely thereafter unless it is restored
150 by the department as hereinafter provided. Whenever
151 the commissioner, after full investigation, shall find that
152 the character of any person who was convicted of a third
153 or subsequent offense under subsection (a) or (b) of
154 this section and the circumstances at the time indicate
155 that he is not likely to repeat his offense again and the
156 public good does not require that his license be longer
157 revoked, the commissioner may if it is deemed advisable
158 restore such license at any time more than ten years
159 after the date on which it was revoked.

160 The discretionary power herein conferred may be
161 exercised by the commissioner and the department with
162 respect to the restoring of licenses revoked because of
163 convictions prior to the passage hereof.

CHAPTER 76

(Com. Sub. for S. B. 185—By Mr. Benson)

[Passed March 11, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting stopping of vehicle or combination of vehicles for weighing if no weighing device is then present unless the vehicle or combination of vehicles is escorted to a weighing device without delay; prohibiting detaining such vehicle or combination for more than one hour unless impounded.

Be it enacted by the Legislature of West Virginia:

That section ten, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-10. Officers may weigh, measure, etc., vehicles and require removal or rearrangement of excess loads.

1 (a) Any police officer or employee of the department
2 of highways designated by the commissioner of highways
3 as a member of an official weighing crew may require
4 the driver of any vehicle or combination of vehicles on
5 any highway to stop and submit such vehicle or combina-
6 tion of vehicles to a weighing with portable or stationary
7 weighing devices or submit such vehicle or combination
8 of vehicles to a measuring or to any other examination
9 necessary to determine if such vehicle or combination of
10 vehicles is in violation of any of the provisions of this
11 article, and may require that such vehicle or combination
12 of vehicles be driven to the nearest weighing device, but
13 only if such weighing device is within two miles of the
14 place where the vehicle or combination of vehicles is
15 stopped.

16 No police officer or member of an official weighing crew

17 may stop a vehicle or combination of vehicles for weigh-
18 ing unless a portable or stationary weighing device is
19 actually present at the location where, and at the time,
20 the vehicle or combination of vehicles is stopped or unless
21 the vehicle or combination of vehicles is escorted immedi-
22 ately after being stopped to a portable or stationary
23 weighing device. In no case may a vehicle or combination
24 of vehicles be detained more than one hour from the time
25 the same is stopped for weighing unless the vehicle or
26 combination of vehicles is impounded for a violation in
27 accordance with the provisions of section fourteen of this
28 article.

29 (b) Whenever an officer or a member of an official
30 weighing crew determines that a vehicle or combination
31 of vehicles is in violation of any of the provisions of this
32 article, he may require the driver to stop such vehicle or
33 combination of vehicles in a suitable place and to remain
34 standing until such vehicle or combination of vehicles is
35 brought into conformity with the provisions violated.

36 In the case of a weight violation all material unloaded
37 shall be cared for by the owner, lessee or borrower of
38 such vehicle or combination of vehicles at the risk of such
39 owner, lessee or borrower: *Provided*, That no criminal
40 charge shall be preferred against any driver, operator or
41 owner of a vehicle when a rearrangement of the load
42 upon the vehicle, without removal therefrom, reduces the
43 axle loads of said vehicle to such limit as is permitted
44 under this chapter.

45 (c) Any driver of a vehicle or combination of vehicles
46 who fails or refuses to comply with any requirement or
47 provision of this section shall be guilty of a misdemeanor.

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CHAPTER 77

(S. B. 66—By Mr. Huffman)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article twelve,
chapter eight of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to enlargement of time period from thirty days to six months after accrual of injury to file notice of claim.

Be it enacted by the Legislature of West Virginia:

That section twenty, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-20. Notice to be given of claims for damages due to alleged negligence; waiting period.

1 Notwithstanding any other provision of this code or any
2 charter provision to the contrary, no action shall be main-
3 tained against any municipality for injury to any person
4 or property or for wrongful death alleged to have been
5 sustained by reason of the negligence of the municipality,
6 or of any officer, agent or employee thereof, unless a
7 written notice by the claimant, his agent, attorney
8 or representative of the nature of the claim and of the
9 time and place at which the injury is alleged to have
10 occurred or been received shall have been filed with the
11 mayor, clerk, recorder or municipal attorney within six
12 months after such cause of action shall have accrued. The
13 cause of action shall be deemed to have accrued on the
14 date of the sustaining of the injury, except that where
15 death results therefrom the time for the personal repre-
16 sentative to give notice shall run from the date of death.
17 An action at law for damages for injury to any person or
18 property or for wrongful death shall not be commenced
19 until the expiration of thirty days after the filing of the
20 notice provided for in this section.

21 Substantial compliance with the notice provisions of
22 this section shall be deemed sufficient compliance thereof.

19 county board of education in this state, or (5) general
20 obligation bonds of any municipality in this state.

21 (c) Interest bearing savings accounts in banking insti-
22 tutions, the accounts of which are insured by the federal
23 deposit insurance corporation, or in federal savings and
24 loan associations, the accounts of which are insured by
25 the federal savings and loan insurance corporation, or in
26 building and loan associations, the accounts of which are
27 insured by the federal savings and loan insurance
28 corporation: *Provided*, That an investment in any such
29 savings account in excess of the amount thereof which
30 would be insured by the federal deposit insurance corpora-
31 tion or the federal savings and loan insurance corpora-
32 tion, as the case may be, shall not be made unless such
33 banking institution, federal savings and loan association
34 or building and loan association provides adequate bond or
35 other adequate security for the amount of the proposed
36 municipal investment in excess of such insurance cover-
37 age, the adequacy of any such bond or other security to
38 be determined by the treasurer of such municipality.

CHAPTER 80

(Com. Sub. for H. B. 815—By Mr. Harman)

[Passed March 8, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a; and to amend article fifteen of said chapter by adding thereto a new section, designated section ten-a, all relating to benefits to policemen and firemen.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-a; and that

article fifteen of said chapter be amended by adding thereto a new section, designated section ten-a, all to read as follows:

Article

- 14. Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.**
- 15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.**

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-2a. Policemen who are required to work during holidays; how compensated.

- 1 From the effective date of this section, if any municipal
- 2 police officer is required to work during a legal holiday
- 3 as is specified in section one, article two, chapter two of this
- 4 code, or if a legal holiday falls on the police officer's regular
- 5 scheduled day off, he shall be allowed equal time off at such
- 6 time as may be approved by the chief of police under whom
- 7 he serves, or in the alternative, shall be paid at a rate not
- 8 less than one and one-half times his regular rate of pay.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-10a. Firemen who are required to work during holidays; how compensated.

- 1 From the effective date of this section, if any member
- 2 of a paid fire department is required to work during a legal
- 3 holiday as is specified in section one, article two, chapter
- 4 two of this code, or if a legal holiday falls on the member's
- 5 regular scheduled day off, he shall be allowed equal time
- 6 off at such time as may be approved by the chief executive
- 7 officer of the department under whom he serves, or in the
- 8 alternative, shall be paid at a rate not less than one and
- 9 one-half times his regular rate of pay.

CHAPTER 81

(H. B. 1440—By Mr. Crabtree)

[Passed March 17, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers, authority and duties of municipal law-enforcement officials and policemen; supervision of prisoners in the jail.

Be it enacted by the Legislature of West Virginia:

That section three, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

**PART II. POWERS, AUTHORITY AND DUTIES OF
LAW-ENFORCEMENT OFFICIALS AND POLICEMEN.**

§8-14-3. Powers, authority and duties of law-enforcement officials and policemen.

1 The chief and any member of the police force or depart-
2 ment of a municipality and any municipal sergeant shall
3 have all of the powers, authority, rights and privileges within
4 the corporate limits of the municipality with regard to the
5 arrest of persons, the collection of claims, and the execution
6 and return of any search warrant, warrant of arrest or other
7 process, which can legally be exercised or discharged by a
8 deputy sheriff of a county. In order to arrest for the
9 violation of municipal ordinances and as to all matters
10 arising within the corporate limits and coming within the
11 scope of his official duties, the powers of any chief, policeman

12 or sergeant shall extend anywhere within the county or coun-
13 ties in which the municipality is located, and any such chief,
14 policeman or sergeant shall have the same authority of
15 pursuit and arrest beyond his normal jurisdiction as has a
16 sheriff. For an offense committed in his presence, any such
17 officer may arrest the offender without a warrant and take
18 him before the mayor or police court or municipal court to
19 be dealt with according to law. He and his sureties shall be
20 liable to all the fines, penalties and forfeitures which a
21 deputy sheriff is liable to, for any failure or dereliction
22 in such office, to be recovered in the same manner and
23 in the same courts in which such fines, penalties and for-
24 feitures are recovered against a deputy sheriff. In addition to
25 the mayor, or police court judge or municipal court judge, if
26 any, of a city, the chief of police of any municipality and in
27 the absence from the station house of the chief of police the
28 captains of police and lieutenants of police shall each have
29 authority to administer oaths to complainants and to issue
30 arrest warrants thereon for all violations of the ordinances of
31 such municipality.

32 It shall be the duty of the mayor and police officers of
33 every municipality and any municipal sergeant to aid in
34 the enforcement of the criminal laws of the state within the
35 municipality, independently of any charter provision or any
36 ordinance or lack of an ordinance with respect thereto, and
37 to cause the arrest of or arrest any offender and take him
38 before a regular or ex officio justice of the peace of the
39 county or a magistrate to be dealt with according to the law.
40 Failure on the part of any such official or officer to discharge
41 any duty imposed by the provisions of this section shall be
42 deemed official misconduct for which he may be removed from
43 office. Any such official or officer shall have the same author-
44 ity to execute a warrant issued by a justice of the peace or a
45 magistrate, and the same authority to arrest without a warrant
46 for offenses committed in his presence, as a deputy sheriff.

47 The chief of police shall be charged with the keeping and
48 security of the jail and at any time that one or more prisoners
49 are being held in the jail, he shall require that the jail be
50 attended by a police officer or other responsible person.

CHAPTER 82

(Com. Sub. for S. B. 472—By Mr. Palumbo)

[Passed March 10, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to the pledge or expenditure of the hotel occupancy tax for the security and payment of revenue bonds issued by municipalities, and the contributing of such revenues to building commissions created by municipalities for such uses as the building commission may determine, including the payment of bonds issued by such building commission.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eighteen-a, all to read as follows:

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-18a. Pledge of the hotel occupancy tax; contribution of revenues to building commission.

1 In addition to the rates or charges authorized to be
2 pledged and expended for the security and payment of
3 bonds as provided in this article, the governing body
4 issuing such bonds shall have plenary power and authority
5 to pledge and expend for the security and payment of
6 such bonds all, or any part, of the revenues which are
7 derived from the hotel occupancy tax which a municipi-
8 pality may impose pursuant to section three, article
9 thirteen of this chapter and which are specifically dedi-
10 cated by such governing body for any purpose or purposes
11 set forth in section three, article thirteen of this chapter.
12 All such sums which are so pledged shall be deemed "rev-
13 enues of the works" for all purposes of the provisions of

14 this article. The governing body shall also have the power
15 and authority to contribute all, or any part of, the revenues
16 derived from said hotel occupancy tax to a building com-
17 mission created by such governing body pursuant to
18 article thirty-three, chapter eight of this code for such
19 lawful purposes which such building commission shall
20 determine and which are set forth in section three, article
21 thirteen of this chapter, including payment of revenue
22 bonds issued by such building commission.

CHAPTER 83

(Com. Sub. for S. B. 127—By Mr. Brotherton, Mr. President)

[Passed February 19, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to authority of municipalities to cooperate with the state of West Virginia or any political subdivision thereof, or with the United States of America or any agency or department thereof in combined waterworks and sewerage systems.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a, to read as follows:

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

§8-20-1a. Cooperation with other governmental units.

1 In carrying out any lawful purpose prescribed by this
2 article, any municipality may, in the exercise of its powers,
3 duties and responsibilities, cooperate or join with the state
4 of West Virginia or any political subdivision, agency,
5 board, commission, office or department thereof, how-
6 ever designated, or with the United States of America
7 or any agency or department thereof.

CHAPTER 84

(H. B. 1405—By Mr. McLaughlin and Mr. Polan)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-a, authorizing any Class I or Class II city to establish a neighborhood rehabilitation fund; providing certain legislative findings and purpose; defining terms; providing that any such neighborhood rehabilitation fund shall be used to make loans or to guarantee the repayment of loans made to certain residents of any such Class I or Class II city for the rehabilitation of their residences; relating to certain written agreements setting forth the terms and conditions pertaining to such loans; limiting the liability of any such Class I or Class II city to the funds on deposit in such neighborhood rehabilitation fund; and providing that any such Class I or Class II city shall have the authority to provide technical and other assistance to such residents in connection with such rehabilitation.

Be it enacted by the Legislature of West Virginia:

That chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-a, to read as follows:

ARTICLE 20A. NEIGHBORHOOD REHABILITATION.

§8-20A-1. Legislative findings and purpose.

§8-20A-2. Definitions.

§8-20A-3. Neighborhood rehabilitation fund.

§8-20A-4. Inspection and technical assistance.

§8-20A-1. Legislative findings and purpose.

- 1 (a) The Legislature hereby finds and declares that there has
- 2 been for a number of years a clear trend for younger and more
- 3 affluent persons and families residing in Class I or Class II
- 4 cities to move their residences from the inner urban areas of
- 5 such cities to newer suburban areas; that as a result, a dispro-
- 6 portionate number of homeowners remaining in such inner ur-

7 ban areas are older, less affluent and otherwise less able to af-
8 ford the expense of the remodeling, repairing and rehabilitating
9 of their residences necessary to maintain such residences in a
10 sanitary, safe and decent condition; that because of their lack
11 of acceptable loan collateral, the age of their residences and the
12 location and age of the neighborhoods in which their residences
13 are located, many of such homeowners have not been able to
14 borrow funds necessary to effect such remodeling, repair and
15 rehabilitation; and that some of such homeowners who have
16 been able to borrow funds for such purposes have been able
17 to do so only upon rates of interest and upon other terms and
18 conditions which are particularly onerous to such homeowners.

19 (b) The Legislature further finds and declares that the as-
20 sistance authorized in this article will provide, and will en-
21 courage private lenders to provide, to such homeowners, more
22 readily and at rates of interest and upon other terms and con-
23 ditions significantly more favorable to such homeowners, the
24 loans necessary to finance the cost of such remodeling, repair
25 and rehabilitations.

26 (c) The Legislature further finds and declares that it is
27 manifestly in the public interest to foster, in the populous inner
28 urban areas of this state, the pride, self-respect and esteem in-
29 cident to home ownership and to encourage and assist in the
30 maintenance of residences situate in such areas in a safe, de-
31 cent and sanitary condition; that without the assistance autho-
32 rized in this article there will be continued deterioration of
33 such inner urban areas with the resultant proliferation of urban
34 decay and slums, higher crime rates and general decline in
35 civic pride, public spirit and the quality of life, with all of the
36 public cost, direct and indirect, attendant thereon; and that
37 accordingly by providing such assistance, any Class I or Class
38 II city will be acting in all respects for the benefit of the people
39 of the state of West Virginia and shall thereby serve a public
40 purpose in improving and otherwise promoting their health,
41 welfare and prosperity.

§8-20A-2. Definitions.

1 As used in this article, unless the context otherwise requires:

2 (1) "Eligible dwelling" means real estate upon which there

3 is located a structure designed primarily for residential hous-
4 ing and consisting of dwelling units for not more than four
5 families, provided that all occupancy thereof shall be limited
6 to persons and families who would qualify as eligible residents.

7 (2) "Eligible resident" means a person or family residing
8 in an eligible dwelling owned by such person or family situate
9 within the corporate limits of a Class I or Class II city, irre-
10 spective of race, creed, national origin or sex, with respect to
11 whom it is determined by the governing body of such city that
12 (a) such person or family because of financial conditions, age,
13 infirmity, family size or other reasons, is unable to obtain, on
14 suitable terms and conditions, loans or other credit necessary
15 for the rehabilitation of such eligible dwelling, and hence re-
16 quires the assistance as provided in this article, (b) such reha-
17 bilitation is necessary to place such eligible dwelling in a safe,
18 sanitary and decent condition, and (c) the assistance as autho-
19 rized in this article shall make financing available to such per-
20 son or family, or enable such person or family to obtain such
21 financing, on terms and conditions substantially more favorable
22 to such person or family than would otherwise be available.

23 (3) "Rehabilitation" means a specific work of improvement
24 within a Class I or Class II city undertaken primarily to re-
25 model, repair, or rehabilitate an eligible dwelling occupied by
26 an eligible resident as his principal residence.

§8-20A-3. Neighborhood rehabilitation fund.

1 (a) Any Class I or Class II city shall have plenary power and
2 authority, by charter provision, ordinance or resolution, to es-
3 tablish a special fund of moneys made available by appropria-
4 tion, grant, contribution, loan or otherwise, to be known as the
5 neighborhood rehabilitation fund of such city, to be governed,
6 administered and accounted for by the governing body of such
7 city as a special purpose account, separate and distinct from
8 any other moneys, fund or funds owned by such city.

9 (b) The governing body of any Class I or Class II city may
10 from time to time, by resolution, establish criteria which shall
11 govern the determination of persons and families who qualify
12 as eligible residents.

13 (c) The purpose of such neighborhood rehabilitation fund
14 shall be to provide funds for the making of loans, or to guaran-
15 tee the repayment of loans made by private lenders, to eligible
16 residents of such city, the proceeds of which loans are to be
17 used exclusively for rehabilitation.

18 (d) Such loans shall be made or guaranteed only upon de-
19 termination by the governing body of such city, or by a board
20 or commission appointed for such purpose by such governing
21 body, that the borrowers are eligible residents, that the pro-
22 ceeds of the loan shall be used for rehabilitation and that loans
23 to such eligible borrowers for rehabilitation are not otherwise
24 available upon reasonably equivalent terms and conditions.

25 (e) No loan shall be made or guaranteed by such city except
26 in accordance with a written agreement between such city, the
27 eligible resident and in the case of a guaranteed loan the lend-
28 er making such loan, which agreement shall provide, without
29 limitation, that:

30 (1) The proceeds of such loan shall be used exclusively for
31 rehabilitation;

32 (2) The loan shall be in such principal amount, repayable
33 in such number of consecutive and substantially equal monthly
34 installments, at such annual rate of interest and shall be se-
35 cured in such manner as specified in such agreement;

36 (3) In the case of a guaranteed loan, such city shall be ob-
37 ligated to repay, from the neighborhood rehabilitation fund
38 established in accordance with this article, any installment or
39 installments of such loan as shall be in default from time to
40 time in accordance with the provisions of such agreement;

41 (4) In the event an eligible resident defaults on such a loan
42 made by such city, or in the event such city incurs an obliga-
43 tion on a guaranteed loan such city shall be entitled, at its
44 option, to realize on any and all security for said loan:
45 *Provided*, That the right of such city to realize on such security
46 with respect to a guaranteed loan shall be subordinate and sec-
47 ondary to the right of the lender as to such security, to the
48 extent of the unpaid balance of such loan.

49 (f) Nothing in this article contained shall be so construed

50 as to authorize any city to make any contract or incur any ob-
51 ligation or liability of any kind or nature, except such as shall
52 be discharged or payable solely from the funds on deposit in
53 such neighborhood rehabilitation fund.

§8-20A-4. Inspection and technical assistance.

1 In addition to all other powers and rights of a Class I or
2 Class II city, any Class I or Class II city shall have plenary
3 power and authority, at the request of eligible residents, to in-
4 spect the residences of such eligible residents, to make recom-
5 mendations concerning rehabilitation and to provide all man-
6 ner of technical services and assistance in the planning, pro-
7 cessing and design of needed rehabilitation.

CHAPTER 85

(S. B. 174—By Mr. Brotherton, Mr. President)

[Passed February 25, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eighteen, article twenty-seven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, ten, fifteen, twenty and twenty-five of said article; and to amend and reenact section three, article one, and section one, article five, chapter twenty-four-a, all of said code, all relating to urban mass transportation authorities and the removal of urban mass transportation authorities from the jurisdiction of the public service commission.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article twenty-seven, chapter eight be repealed; that sections three, ten, fifteen, twenty and twenty-five of said article be amended and reenacted; and that section three, article one, and section one, article five, chapter twenty-four-a, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Chapter**8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.****24A. Motor Carriers of Passengers and Property for Hire.****CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.****ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN MASS TRANSPORTATION SYSTEMS.****PART I. TITLE; FINDINGS; DEFINITIONS;
CREATION OF AUTHORITIES.****§8-27-3. Definitions.****PART III. POWERS AND DUTIES OF AUTHORITIES.****§8-27-10 Powers and duties of authorities generally.****PART VI. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.****§8-27-15. Trust indenture generally.****PART VIII. INDEBTEDNESS; EXEMPTION FROM TAXATION.****§8-27-20. Exemption from taxation.****PART X. CONFLICT OF INTEREST; BIDS; LEGAL
INVESTMENTS; CONSTRUCTION.****§8-27-25. Article constitutes complete authority; liberal construction.****PART I. TITLE; FINDINGS; DEFINITIONS;
CREATION OF AUTHORITIES.****§8-27-3. Definitions.**

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) "Authority" means any urban mass transporta-
4 tion authority created pursuant to the provisions of this
5 article;

6 (b) "Board" means the board of any urban mass trans-
7 portation authority;

8 (c) "Contiguous counties" means two or more coun-
9 ties which constitute a compact territorial unit within
10 an unbroken boundary wherein one county touches at
11 least one other county, but does not require that

12 each county touch all of the other counties so com-
13 bining;

14 (d) "Facilities and equipment" means all real and
15 personal property of every kind and character owned
16 or held by any urban mass transportation system for
17 the purpose of providing transportation by bus or rail
18 or other conveyance serving the public;

19 (e) "Participating government" means any munici-
20 pality or county establishing or participating in an urban
21 mass transportation authority;

22 (f) "Project" means any undertaking of an author-
23 ity;

24 (g) "Revenues" means the gross receipts derived
25 directly or indirectly from or in connection with the
26 operation by an authority of any urban mass transpor-
27 tation system or systems and shall include, without
28 limitation, all fees, rates, fares, rentals or other income
29 actually received or receivable by or for the account
30 of an authority from the operation of the system, and
31 any other receipts from whatever source derived;

32 (h) "Service area of the authority" means and in-
33 cludes an area commensurate with the area served by
34 an existing system or systems acquired or to be acquired
35 by an authority, or if there be no existing system, the
36 area shall extend to and include an area to be defined
37 by the authority;

38 (i) "System" means any urban mass transportation
39 system;

40 (j) "Trust indenture" means a security instrument
41 entered into by an authority pursuant to which bonds
42 or notes are issued;

43 (k) "Urban area" means any area that includes a
44 municipality or other built-up place which is appro-
45 priate for a system to serve commuters or others in the
46 locality taking into consideration the local patterns and
47 trends of growth;

48 (l) "Urban mass transportation system" means any

49 common carrier of passengers for hire which operates
50 equipment over regular routes within the service area
51 of the authority; and

52 (m) The singular shall include the plural and the
53 plural shall include the singular.

PART III. POWERS AND DUTIES OF AUTHORITIES.

§8-27-10. Powers and duties of authorities generally.

1 Each authority is hereby given the power:

2 (a) To sue and be sued, implead and be impleaded;

3 (b) To have and use a seal and alter the same at
4 pleasure;

5 (c) To make and adopt all rules and regulations and
6 bylaws as may be necessary or desirable to enable it
7 to exercise the powers and perform the duties conferred
8 or imposed upon it by the provisions of this article;

9 (d) To employ, in its discretion, planning, architectural
10 and engineering consultants, attorneys, accountants, con-
11 struction, financial, transportation and traffic experts and
12 consultants, superintendents, managers and such other
13 employees and agents as may be necessary in its judg-
14 ment, and to fix their compensation;

15 (e) To acquire by grant, purchase, gift, devise or
16 lease and to hold, use, sell, lease or otherwise dispose
17 of real and personal property of every kind and nature
18 whatsoever, licenses, franchises, rights and interests
19 necessary for the full exercise of its powers pursuant to
20 the provisions of this article, or which may be con-
21 venient or useful for the carrying out of such powers;

22 (f) To acquire, construct, reconstruct, complete, de-
23 velop, improve, own, equip, maintain and operate any
24 system or systems, or any part thereof, including, with-
25 out limitation, the power to acquire by purchase, lease
26 or gift all or any part of any licenses, franchises, rights,
27 interests, engineering and technical studies, data or re-
28 ports owned or held by any person and determined by
29 its board to be necessary, convenient or useful to the

30 authority in connection with the acquisition, construction,
31 reconstruction, completion, development, improvement,
32 ownership, equipping, maintenance or operation of any
33 system or systems and to reimburse public utilities for
34 relocation of any utility line or facility made necessary
35 by the construction, reconstruction, completion, develop-
36 ment, improvement, equipping, maintenance or operation
37 of any system or systems;

38 (g) To acquire any land, rights or easements deemed
39 necessary or incidental for the purposes of the authority
40 by eminent domain to the same extent and to be exer-
41 cised in the same manner as now or hereafter provided
42 by law for such right of eminent domain by business
43 corporations;

44 (h) To enter into contracts and agreements which are
45 necessary, convenient or useful to carry out the purposes
46 of this article with any person, public corporation, state
47 or any agency or political subdivision thereof and the
48 federal government and any department or agency
49 thereof, including, without limitation, contracts and
50 agreements for the joint use of any property and rights
51 by the authority and any person or authority operating
52 any system, whether within or without the service area
53 of the authority, and contracts and agreements with any
54 person or authority for the maintenance, servicing,
55 storage, operation or use of any system or part thereof,
56 facility or equipment on such basis as shall seem proper
57 to its board;

58 (i) To enter into contracts and agreements for super-
59 intendence and management services with any person,
60 who has executive personnel with experience and skill
61 applicable to the superintendence and management of
62 any system, for the furnishing of its services and the
63 services of experienced and qualified personnel for the
64 superintendence and management of any system or any
65 part thereof, including, without limitation, superinten-
66 dence over personnel, purchases, properties and operations
67 and all matters relating thereto, and any revenue bond
68 trust indenture may require such contract or agreement,
69 but the personnel whose services are to be so furnished

70 under any such contract or agreement shall not include
71 any member of the board, any member of the immediate
72 family of a member of the board or any agents or em-
73 ployees of the authority, and no such contract or agree-
74 ment shall extend beyond a term of ten years or such
75 longer time as there are outstanding any revenue bonds
76 under a trust indenture which requires such contract or
77 agreement;

78 (j) To assume any lien indebtedness of any system
79 or part thereof acquired by it under the provisions of
80 this article;

81 (k) To execute security agreements, contracts, leases,
82 equipment trust certificates and any other forms of con-
83 tracts or agreements, granting or creating a lien, security
84 interest, encumbrance or other security in, on or to
85 facilities and equipment, containing such terms and pro-
86 visions as the board deems necessary;

87 (l) To apply for, receive and use grants, grants-in-
88 aid, donations and contributions from any source or
89 sources, including, but not limited to, the federal gov-
90 ernment and any agency or department thereof, and a
91 state government whose constitution does not prohibit
92 such grants, grants-in-aid, donations and contributions,
93 and any agency or department thereof, and to accept
94 and use bequests, devises, gifts and donations from any
95 person;

96 (m) To lease any system or any part thereof to, or
97 contract for the use of any system or any part thereof
98 by, any person, but a trust indenture may prohibit, limit
99 or restrict the exercise of such power;

100 (n) To acquire for cash or in exchange for its bonds
101 all or any part of any publicly or privately owned system
102 or systems;

103 (o) To make or cause to be made either by itself or in
104 cooperation with other persons or organizations, whether
105 public or private, traffic surveys, population surveys
106 and such other surveys and studies as it shall consider
107 useful in the performance of its duties or the exercise

108 of its powers under the provisions of this article and in
109 connection therewith the authority may contract with
110 any person or organization for such planning services;

111 (p) To enter into contracts and agreements with any
112 public or private system either within or contiguous to
113 its boundaries for the transfer of passengers between it
114 and the system operating in territory contiguous to its
115 boundaries;

116 (q) To fix and establish from time to time, such fees,
117 rates or other charges and routes, time schedules and
118 standards of service as will provide revenues in each
119 year at least sufficient to pay the principal of and interest
120 on all bonds issued by the authority, and reasonable
121 reserves therefor, as the same shall become due, together
122 with the cost of administration, maintenance, repair and
123 operation of such system or systems in each year, together
124 with all other payments required in each such year by
125 the resolution which authorized the issuance of such
126 bonds, or the trust indenture securing the same, includ-
127 ing, without limitation, reasonable reserves or margins
128 for any of such purposes: *Provided*, That prior to the
129 initial implementation of any fees, rates or other charges
130 and any subsequent increase thereof affecting generally
131 the users of the system, every authority shall hold a
132 public hearing in the service area of the system on such
133 proposed fees, rates or other charges or any increase
134 thereof, and each authority shall publish a notice of the
135 time and place of said hearing as a Class II legal adver-
136 tisement in compliance with the provisions of article
137 three, chapter fifty-nine of this code, and the publication
138 area for such publication shall be the service area of the
139 authority. Such notice shall plainly state the fees, rates
140 or other charges or any increase thereof to be imposed,
141 the time when they shall go into effect, and the time
142 and place where such public hearing will be conducted.
143 Said public hearing shall not be less than ten days sub-
144 sequent to the date of the last publication of such notice.
145 At such hearing all objections and suggestions shall be
146 heard, and after the hearing has been held the authority
147 shall take such action as it shall deem proper: *Provided*,

148 *however*, That the foregoing public hearing and notice
149 requirements shall not apply to fees, rates or charges
150 imposed for charter or special services rendered by said
151 authorities;

152 (r) To issue revenue bonds of the authority for any
153 of its purposes or projects and to refund its bonds, all
154 as provided in this article;

155 (s) To encumber or mortgage all or any part of its
156 facilities and equipment;

157 (t) To prepare plans for and assist in the relocation
158 of persons displaced by the authority and to make re-
159 location payments to or with respect to such persons for
160 moving expenses and losses of property for which re-
161 imbursement or compensation is not otherwise made,
162 including the making of such payments financed by the
163 federal government; and

164 (u) To do any and all things necessary or convenient
165 to carry out the powers given in this article unless other-
166 wise forbidden by law.

PART VI. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.

88-27-15. Trust indenture generally.

1 In the discretion of the authority, any bonds issued
2 under the provisions of this article may be secured by
3 a trust indenture by and between such authority and
4 a corporate trustee, which may be any trust company
5 or banking institution having the powers of a trust
6 company within or without the state, or any person
7 in the United States having power to enter into the
8 same, including any federal agency.

9 Any resolution authorizing the issuance of such bonds
10 or any trust indenture securing the same may contain
11 such provisions for protecting and enforcing the rights
12 and remedies of the bondholders and of the trustee as
13 the authority may deem necessary and proper and
14 not in violation of law, including provisions pledging
15 all or any part of the revenues of such authority or
16 encumbering all or any part of the facilities and equip-

17 ment of such authority to secure the payment of the
18 bonds subject to such agreements with bondholders as
19 may then exist; limiting the purpose to which the pro-
20 ceeds of sale of any bonds then or thereafter to
21 be issued may be applied; defining the duties of
22 such authority in relation to the acquisition, construc-
23 tion, improvement, maintenance, repair, operation and
24 insurance of any project or projects in connection with
25 which such bonds shall have been authorized; providing
26 for the custody, safeguarding and application of all
27 moneys; limiting the issuance of additional bonds; pre-
28 scribing a procedure by which the provisions of any
29 trust indenture or contract with bondholders may be
30 amended or modified; requiring such authority to fix
31 and establish such fees, rates or other charges and routes,
32 time schedules and standards of service as will provide
33 revenues in each year at least sufficient to pay the prin-
34 cipal of and interest on all bonds issued by such
35 authority and reasonable reserves therefor as the
36 same shall become due, together with the cost of ad-
37 ministration, maintenance, repair and operation of such
38 system or systems in each year, including, without
39 limitation, reasonable reserves or margins or sinking
40 funds for any of such purposes, defining the acts or
41 omissions to act which shall constitute a default in the
42 duties of such authority to the holders of its bonds and
43 providing the rights and remedies of such holders and
44 of the trustee in the event of default and the manner
45 and terms upon which such default may be declared
46 cured; vesting in a trustee such property rights, pow-
47 ers and duties, in trust, as such authority may deter-
48 mine; and such other additional provisions as such
49 authority may deem necessary or desirable for the
50 security of the holders of bonds issued under the pro-
51 visions of this article, notwithstanding that such other
52 provisions are not expressly enumerated in this section,
53 it being the intention to grant to the authority the
54 power to make any and all covenants or agreements
55 necessary to secure greater marketability of bonds issued
56 under the provisions of this article, as fully and to the
57 same extent as such covenants or agreements could be

58 made by a private corporation rendering similar ser-
59 vices, and to grant to such authorities full and complete
60 power to enter into any contract, covenant or agreement
61 with holders of bonds issued under the provisions of
62 this article not inconsistent with this article or the
63 constitution of this state.

PART VIII. INDEBTEDNESS; EXEMPTION FROM TAXATION.

§8-27-20. Exemption from taxation.

1 It is hereby found, determined and declared that the
2 creation of any authority and the carrying out of its
3 purposes is in all respects for the benefit of the people
4 of this state in general, and of the participating govern-
5 ments in particular, and is a public purpose; and that
6 the authority will be performing an essential govern-
7 mental function in the exercise of the powers conferred
8 upon it by the provisions of this article. Accordingly,
9 each authority and, without limitation, its revenues,
10 properties, operations and activities shall be exempt
11 from the payment of any taxes or fees to the state or
12 any of its political subdivisions or to any officer or em-
13 ployee of the state or any of its political subdivisions.
14 Property, real and personal, owned by or leased and
15 used exclusively by each authority shall be public prop-
16 erty and therefore exempt from taxation in accordance
17 with section nine, article three, chapter eleven of this
18 code. The revenue bonds or other evidences of in-
19 debtedness issued pursuant to the provisions of this
20 article, and the interest thereon, shall be exempt from
21 taxation, except inheritance and transfer taxes.

PART X. CONFLICT OF INTEREST; BIDS; LEGAL
INVESTMENTS; CONSTRUCTION.

**§8-27-25. Article constitutes complete authority; liberal con-
struction.**

1 This article shall constitute full and complete au-
2 thority for the creation of any authority and for carrying
3 out the powers and duties of any such authority and for
4 the issuance, sale or exchange of revenue bonds by such
5 authority as provided in this article. The provisions of

6 this article shall be liberally construed to accomplish its
7 purpose and no procedure or proceedings, notices,
8 consents or approvals shall be required in connection
9 therewith except as may be prescribed by this article.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

Article

1. **Purposes, Definitions and Exemptions.**
5. **Powers and Duties of Commission.**

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specifi-
2 cally otherwise provided, shall not apply to:

3 (1) Motor vehicles operated exclusively in the trans-
4 portation of United States mail or in the transportation
5 of newspapers;

6 (2) Motor vehicles owned and operated by the United
7 States of America, the state of West Virginia, or any
8 county, municipality or county board of education, ur-
9 ban mass transportation authority established and main-
10 tained pursuant to article twenty-seven, chapter eight
11 of this code, or by any department thereof, and any
12 motor vehicles operated under a contract with a county
13 board of education exclusively for the transportation
14 of children to and from school or such other legitimate
15 transportation for the schools as the commission may
16 specifically authorize;

17 (3) Motor vehicles used exclusively in the transpor-
18 tation of agricultural or horticultural products, live-
19 stock, poultry and dairy products from the farm or or-
20 chard on which they are raised or produced to markets,
21 processing plants, packing houses, canneries, railway
22 shipping points and cold storage plants, and in the trans-
23 portation of agricultural or horticultural supplies to
24 such farms or orchards to be used thereon;

25 (4) Motor vehicles used exclusively in the transpor-
26 tation of human or animal excreta;

27 (5) Motor vehicles used exclusively in ambulance
28 service, or duly chartered rescue squad service;

29 (6) Motor vehicles used exclusively for volunteer
30 fire department service;

31 (7) Motor vehicles used exclusively in the transpor-
32 tation of coal from mining operations to loading fa-
33 cilities for further shipment by rail or water carriers;
34 and

35 (8) Motor vehicles used by petroleum commission
36 agents and oil distributors solely for the transportation
37 of petroleum products and related automotive products
38 when such transportation is incidental to the business
39 of selling said products: *Provided*, That the owner of
40 said vehicle or vehicles shall have in effect at all times
41 a public liability insurance policy with respect to said
42 vehicle or vehicles and the driver or drivers thereof in
43 an amount equal to or in excess of that required by the
44 public service commission of West Virginia for similar
45 vehicles under its jurisdiction, evidence of which in-
46 surance shall be filed with the motor carrier division
47 of said public service commission. All such motor vehi-
48 cles not so insured shall be subject to the provisions of
49 this chapter.

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-1. Powers of commission as to rates, schedules, etc.

1 The commission shall have power to originate, estab-
2 lish, promulgate, change, investigate and enforce tariffs,
3 rates, joint rates, classifications and schedules for all
4 motor carriers, except urban mass transportation au-
5 thorities established and maintained pursuant to article
6 twenty-seven, chapter eight of this code, and the prac-
7 tices, services and facilities of all motor carriers. And
8 whenever the commission shall, after hearing, find any
9 existing rates, tariffs, joint rates, classifications, sched-
10 ules, practices, services or facilities unjust, unreason-
11 able, insufficient, or unjustly discriminatory or other-
12 wise in violation of any of the provisions of this chapter,
13 the commission shall, by order, fix and require reason-

14 able rates, joint rates, tariffs, classifications, schedules,
15 practices, services or facilities to be followed or estab-
16 lished in the future in lieu of those found to be unjust,
17 unreasonable, insufficient or unjustly discriminatory
18 or otherwise in violation of any provisions of law.

CHAPTER 86

(S. B. 18—By Mr. Darby and Mr. Nelson)

[Passed February 18, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, authorizing municipalities and counties to make appropriations for public purposes to nonstock, non-profit corporations chartered for the purpose of celebrating the American Revolution Bicentennial; subject to certain specified limitations.

Be it enacted by the Legislature of West Virginia:

That article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five, to read as follows:

ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.

PART V. CELEBRATION OF AMERICAN REVOLUTION BICENTENNIAL.

§8-32-5. Legislative findings; authority of municipalities and counties to make appropriations for bicentennial celebration; limitations and restrictions.

- 1 (a) The Legislature hereby finds that the support of
- 2 nonstock, nonprofit corporations dedicated to making
- 3 available to the general public, programs, activities or
- 4 events organized by a bicentennial commission, commit-

tee, group, organization or community, for the purpose of providing historical or cultural activities, municipal, county or regional improvement events or other programs related to the celebration of the American Revolution Bicentennial, is for the general welfare of the public and is a public purpose for which funds of a municipality or county may be lawfully expended. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

(b) When a bicentennial commission, committee, group, organization or community (hereinafter referred to as corporation) is chartered as a nonstock, nonprofit corporation under the laws of this state, and, (1) is organized for the purpose of providing historical or cultural activities, municipal, county or regional improvement events or other programs related to the celebration of the American Revolution Bicentennial, and provides in its charter that its programs, activities or events shall be devoted to the use by the public for all purposes set forth in such charter without regard to race, sex, religion, national origin or economic circumstance, and free from charge except such as is necessary to provide the means to keep any buildings, facilities or grounds in proper condition and repair, or to pay the cost of insurance, care, management, operations, programs, activities or events, so that the general public may have the benefit of such establishments, programs, activities or events for the uses set forth in such corporation's charter at as little expense as possible, (2) provides in its charter that no member, trustee or member of the board of directors (by whatever name the same may be called) of the corporation shall receive any compensation, gain or profit from such corporation, and (3) is operated in compliance with such charter provisions as aforesaid, any municipality in the county in which such corporation is operating, and the county commission of any county in which such corporation is operating, are hereby empowered and authorized to appropriate funds to any such corporation, subject to the provisions and limitations set forth in this section.

45 (c) Any appropriation shall be made from the gen-
46 eral funds of such municipality or county that have not
47 been otherwise appropriated: *Provided*, That no appro-
48 priation shall be made after December thirty-one, one
49 thousand nine hundred seventy-six. Each corporation
50 receiving an appropriation from a municipality or county
51 shall upon demand at any time make a full and complete
52 accounting of all such funds to such governing body
53 of the municipality or to the county commission, as the
54 case may be, and shall in every event without demand
55 make to such governing body or county commission an
56 accounting thereof.

57 (d) Under no circumstances whatever shall any ac-
58 tion taken by any municipality or county commission
59 under the authority of this section give rise to or create
60 any indebtedness on the part of the municipality, the
61 governing body of such municipality, the county, such
62 county commission, any member of such governing body
63 or county commission or any municipal or county official
64 or employee.

65 (e) No municipality or county commission may ap-
66 propriate funds to any corporation under this article
67 unless and until such corporation has recorded a certified
68 copy of its corporate charter in the county in which the
69 principal office of such corporation is located, and has
70 received from the prosecuting attorney a written state-
71 ment that the charter of such corporation contains the
72 necessary language to comply with the provisions of
73 this article.

74 (f) No officer, agent or instrumentality of the state
75 shall require that local government funds be appropri-
76 ated or expended under this section as a prerequisite
77 for, or as matching funds for, a federal or state grant
78 or as a prerequisite to entitle such corporation to receive
79 a grant of federal or state funds.

CHAPTER 87

(H. B. 1157—By Mr. Sommerville)

[Passed February 16, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article thirty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal, county and municipal-county building commissions; providing for the appointment of members to such commissions and the manner of filling vacancies; providing the powers and duties of such commissions; and making the power of eminent domain subject to limitations imposed by the governmental bodies creating such commissions.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article thirty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 33. INTERGOVERNMENTAL RELATIONS—BUILDING COMMISSIONS.

§8-33-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.

§8-33-4. Powers.

§8-33-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.

1 All property, powers and duties and the management and
2 control of each commission shall be vested in a board con-
3 sisting of representatives appointed by the governmental body
4 or bodies creating and establishing such commission. In the
5 case of a municipal building commission or a county building
6 commission such board shall consist of not less than three nor
7 more than five members and in the case of a municipal-county
8 building commission each participating municipality shall ap-
9 point two members and each participating county shall appoint
10 three members. All members of any board shall be appointed

11 for terms of five years. Prior to making the initial appoint-
12 ments to the board, the governmental body or bodies shall
13 make such initial appointments so that approximately one fifth
14 of the total number of members of the board shall be appointed
15 for a term of one year, approximately one fifth of the total
16 number of members of the board shall be appointed for a
17 term of two years, approximately one fifth of the total number
18 of members of the board shall be appointed for a term of three
19 years, approximately one fifth of the total number of members
20 of the board shall be appointed for a term of four years, and
21 approximately one fifth of the total number of members of the
22 board shall be appointed for a term of five years. As the term
23 of each such initial appointee expires the successor to fill the
24 vacancy created by such expired term shall be appointed for a
25 term of five years.

26 The ordinance or order creating a building commission may
27 provide for the manner of appointments to the membership of
28 such commission by the governmental body creating such com-
29 mission, which, in the case of a county, shall be the county
30 commission or other tribunal in lieu thereof and, in the case
31 of a municipality, shall be the governing body thereof.

32 If any member of any board die, resign or for any reason
33 cease to be a member of the board, the governmental body
34 which such member represented shall appoint another indi-
35 vidual to fill the unexpired portion of the term of such mem-
36 ber. No more than two thirds of the total number of members
37 of the board of each commission shall be from the same polit-
38 ical party and no member of any such board shall hold any
39 office (other than the office of notary public) or employment
40 under the United States of America, the state of West Vir-
41 ginia, any county or political subdivision thereof, or any polit-
42 ical party. All members of any board shall be residents of the
43 municipality or county for which appointed. No member of any
44 board shall receive any compensation for his services as such,
45 but each member shall be reimbursed by the commission for
46 any reasonable and necessary expenses actually incurred in the
47 discharge of his duties as a member of the board.

§8-33-4. Powers.

1 Each commission shall have plenary power and authority to:

- 2 (a) Sue and be sued;
- 3 (b) Contract and be contracted with;
- 4 (c) Adopt, use and alter a common seal;
- 5 (d) Make and adopt all necessary, appropriate and lawful
6 bylaws and rules and regulations pertaining to its affairs;
- 7 (e) Elect such officers, appoint such committees and agents
8 and employ and fix the compensation of such employees and
9 contractors as may be necessary for the conduct of the affairs
10 and operations of the commission;
- 11 (f) (1) Acquire, purchase, own and hold any property,
12 real or personal, and (2) acquire, construct, equip, main-
13 tain and operate public buildings, structures, projects and
14 appurtenant facilities, of any type or types for which the
15 governmental body or bodies creating such commission are per-
16 mitted by law to expend public funds (all hereinafter in this
17 article referred to as facilities);
- 18 (g) Apply for, receive and use grants-in-aid, donations and
19 contributions from any source or sources, including but not
20 limited to the United States of America, or any department or
21 agency thereof, and accept and use bequests, devises, gifts
22 and donations from any source whatsoever;
- 23 (h) Sell, encumber or dispose of any property, real or
24 personal;
- 25 (i) Issue negotiable bonds, notes, debentures or other
26 evidences of indebtedness and provide for the rights of the
27 holders thereof, incur any proper indebtedness and issue any
28 obligations and give any security therefor which it may deem
29 necessary or advisable in connection with exercising powers as
30 provided herein;
- 31 (j) Raise funds by the issuance and sale of revenue bonds
32 in the manner provided by the applicable provisions of article
33 sixteen of this chapter, without regard to the extent provided
34 in section five of this article, to the limitations specified in said
35 article sixteen, it being hereby expressly provided that for the
36 purpose of the issuance and sale of revenue bonds, each com-
37 mission is a "governing body" as that term is used in said article
38 sixteen only;

39 (k) Subject to such reasonable limitations and conditions as
40 the governmental body or all of the governmental bodies
41 creating and establishing such building commission may
42 prescribe by ordinance or by order, exercise the power of
43 eminent domain in the manner provided in chapter fifty-four
44 of this code for business corporations, for the purposes set
45 forth in subdivision (f) of this section, which purposes are
46 hereby declared public purposes for which private property
47 may be taken or damaged;

48 (l) Lease its property or any part thereof, for public pur-
49 poses, to such persons and upon such terms as the commission
50 deems proper, but when any municipality or county commis-
51 sion is a lessee under any such lease, such lease must contain a
52 provision granting to such municipality or county commission
53 the option to terminate such lease during any fiscal year
54 covered thereby; and

55 (m) Do all things reasonable and necessary to carry out
56 the foregoing powers.



CHAPTER 88

(S. B. 320—By Mr. Susman)

[Passed February 24, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to organization and administration of the department of natural resources and requiring the director of the department to establish and maintain a uniform bookkeeping system and an internal auditing system for all state parks.

Be it enacted by the Legislature of West Virginia:

That section nine, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**§20-1-9. Fiscal management; bookkeeping and auditing system for state parks.**

1 Subject to any controlling rules and regulations of the
2 department of finance and administration relating to state
3 fiscal management policies and practices, the director shall
4 establish in the department an adequate budget, finance
5 and accounting system which will currently and accu-
6 rately reflect the fiscal operations and conditions of the
7 department at all times. The department's accounting and
8 auditing services shall be on a fiscal-year basis.

9 The director shall select and designate a competent and
10 qualified person as department fiscal officer who, under
11 the supervision of the director, shall be responsible for all
12 budget, finance and accounting services of the department.
13 All moneys received by the department shall be recorded
14 and shall be paid as special revenue to the department of
15 natural resources, as provided in subdivision (i), section
16 two, article two, chapter twelve of this code, except in
17 cases wherein certain receipts of the department are by
18 specific provisions of this chapter required to be paid into
19 some special fund or funds.

20 The director shall establish and maintain a uniform
21 bookkeeping system for all state parks. The system shall
22 be designed so that every financial transaction, excluding
23 those under concessionaire license agreements, that takes
24 place involving each state park respectively shall be
25 recorded by the superintendent thereof. Ledgers of such
26 transactions shall be maintained by the superintendent in
27 each state park.

28 The director shall establish and maintain an internal
29 auditing system for all state parks. The director is hereby
30 authorized to employ at least two internal auditors who
31 shall perform continuous internal audits of the ledgers
32 and financial transactions in each state park, including
33 those of state park concessionaires. The results of the
34 internal audits shall be reported to the legislative auditor
35 quarterly.

CHAPTER 89

(Com. Sub. for S. B. 230—By Mr. Gainer)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to requiring person convicted for violating any criminal law of the state resulting in injury, death or destruction of game or protected species of animal to forfeit the cost of the replacement thereof; setting forth replacement values for game and protected species of animals; and procedures for collecting, depositing and using such forfeitures.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-a, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5a. Forfeiture by person causing injury, death or destruction of game or protected species of animal; replacement values thereof; forfeiture procedures.

- 1 Any person who is convicted of violating any criminal
 - 2 law of this state and the violation causes or results in
 - 3 the injury, death or destruction of game, as defined in
 - 4 section two, article one of this chapter, or a protected
 - 5 species of animal, in addition to any other penalty to
 - 6 which he is subject, shall forfeit the cost of replacing
 - 7 such game or protected species of animal to the state.
 - 8 For such purpose, replacement values for game and
 - 9 protected species of animals are as follows:
- 10 (1) For each game fish or each fish of a protected
 - 11 species taken illegally other than by pollution kill, five
 - 12 dollars for each pound and any fraction thereof;

- 13 (2) For each bear, elk or eagle, five hundred dollars;
14 (3) For each deer or raven, two hundred dollars;
15 (4) For each wild turkey, hawk or owl, one hundred
16 dollars;
17 (5) For each beaver, otter or mink, twenty-five dollars;
18 (6) For each muskrat, raccoon, skunk or fox, ten
19 dollars;
20 (7) For each rabbit, squirrel, opossum, duck, quail,
21 woodcock, grouse or pheasant, three dollars; and
22 (8) For any other game or protected species of
23 animal, five dollars each.
- 24 The court upon convicting such person shall order him
25 to forfeit to the state the proper amount based on the
26 values set forth herein for the game or protected
27 species of animal the injury, death or destruction of
28 which he caused or which resulted from his criminal act.
29 If two or more defendants are convicted for the same
30 violation causing, or resulting in, the injury, death or
31 destruction of game or protected species of animal, the
32 forfeiture shall be declared against them jointly and
33 equally. The forfeiture shall be paid by the person so
34 convicted and ordered to pay the forfeiture within the
35 time prescribed by the court, but not exceeding sixty
36 days. In each instance, the court shall pay such forfeiture
37 to the state treasury where it shall be credited to the
38 department of natural resources to be used only for the
39 replacement, habitat management or enforcement pro-
40 grams for injured, killed or destroyed game or protected
41 species of animal.

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CHAPTER 90

(S. B. 531—By Mr. Gainer)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and twenty-two, article two, chapter twenty of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, relating to transportation of wildlife out of state; providing penalties; and requiring any deer killed by an arrow to be delivered to a conservation officer for checking.

Be it enacted by the Legislature of West Virginia:

That sections twelve and twenty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-12. Transportation of wildlife out of state; penalties.

§20-2-22. Tagging, removing, transporting and reporting deer and wild turkey.

§20-2-12. Transportation of wildlife out of state; penalties.

1 No person shall at any time transport or have in
2 his possession with the intention of transporting be-
3 yond the limits of the state, any species of wildlife or
4 any part thereof killed, taken, captured or caught within
5 this state: *Provided*, That a nonresident legally entitled
6 to hunt and fish in this state may take with him per-
7 sonally, when leaving the state, any wildlife that he
8 has lawfully taken or killed, not exceeding, during
9 the open season, the number that any person may law-
10 fully take or kill in any two days. This section shall
11 not apply to persons legally entitled to propagate and
12 sell wild animals, wild birds, fish, amphibians and
13 other forms of aquatic life.

14 Any person violating the provisions of this section by
15 transporting or possessing with the intention of trans-
16 porting beyond the limits of this state, deer or wild boar,
17 shall be deemed to have committed a separate offense
18 for each animal so transported or possessed. Any per-
19 son violating the provisions of this section shall be
20 guilty of a misdemeanor, and, upon conviction thereof,
21 shall be fined not less than twenty dollars nor more
22 than three hundred dollars and be imprisoned in the
23 county jail not less than ten nor more than sixty days.

§20-2-22. Tagging, removing, transporting and reporting deer and wild turkey.

1 Each person killing a deer or wild turkey found in a
2 wild state shall immediately after removing the entrails,
3 but in any event within one hour and before transporting
4 or removing the carcass in any manner from where it was
5 killed, complete and attach thereto the game tag supplied
6 with his or her hunting license. The game tag shall remain
7 on the carcass until it is dressed for consumption.

8 If such wild turkey or deer has been lawfully killed by
9 a person not required to secure a license, or by a person
10 who has previously killed another species of game bird or
11 game animal for which a game tag is required, or by a
12 person who has lost the tag supplied with his or her
13 license, such person shall make and attach a tag to the
14 carcass within the time specified after such killing. The
15 tag shall bear in plain English the name and address of
16 the hunter, and the date of killing, or, if holding a license,
17 the license number and the date and county where the
18 game was killed.

19 The carcass of such wild turkey or deer shall be de-
20 livered to a conservation officer or an official checking
21 station, unless such deer was killed with an arrow in
22 which case the carcass of such deer shall be delivered to
23 a conservation officer, for checking and retagging before
24 it is either skinned or transported beyond the boundaries
25 of the county adjacent to that in which the kill was
26 made: *Provided, however,* That if no conservation of-
27 ficer can be located, the carcass of such deer shall be
28 delivered to a member of the department of public safety,
29 the county sheriff or any of his deputies, for checking
30 and retagging before it is either skinned or transported
31 beyond the boundaries of the county adjacent to that
32 in which the kill was made.

33 Every failure to have said tag or tags attached, or
34 removing or transporting such animal in any manner, or
35 failure to deliver the carcass to a conservation officer or
36 other officer specified in this section or an official checking
37 station for checking, as herein provided, shall subject

38 the person so neglecting to the penalties provided in
39 this article.

40 Any deer or wild turkey found and not tagged as
41 herein provided shall be forfeited to the state of West
42 Virginia to be disposed of as hereinafter provided and
43 may be seized by any officer whose duty it is to enforce
44 the game laws.

CHAPTER 91

(H. B. 937—By Mr. Smith)

[Passed March 11, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increase in fees for issuance of hunting and fishing licenses by agents appointed by the director of the department of natural resources.

Be it enacted by the Legislature of West Virginia:

That section thirty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

1 The director shall have authority to appoint within any
2 county as many persons as his agents, with authority to
3 issue licenses under the provisions of this article, as may,
4 in his opinion, be necessary, in addition to the clerk of the
5 county commission of the county, to serve the convenience of
6 the public in procuring such licenses. Each person so ap-
7 pointed as such agent and license issuing authority shall,
8 before issuing any license, file with the director a bond
9 payable to the state of West Virginia, in the amount to be
10 fixed by the director at not less than one thousand dollars,

11 conditioned upon the faithful performance of his obligation
12 to issue licenses only in conformity with the provisions of
13 this article and to account for all license fees received by
14 him. The form of such bond shall be prescribed by the
15 attorney general. No person, other than those designated as
16 issuing agents by the director, shall sell licenses or buy
17 the same for the purposes of resale.

18 After the thirty-first day of December, one thousand nine
19 hundred seventy-six, except when any such license is pur-
20 chased from a state official, every person making application
21 for any such license shall pay, in addition to the license fee
22 prescribed therefor in the later sections of this article, an addi-
23 tional fee of twenty-five cents to any county official issuing
24 the license and all such fees collected by county officials
25 shall be paid by them into the general fund of the county
26 treasury, or an additional fee of fifty cents as compensation for
27 any agent issuing the license: *Provided*, That only one fee
28 of twenty-five cents or fifty cents shall be collected by such
29 county officials or agents, respectively, for issuing two or
30 more licenses at the same time for use by the same person or
31 for issuing combination resident statewide hunting, trapping
32 and fishing Class AB licenses.

CHAPTER 92

(Com. Sub. for S. B. 183—By Mr. Benson)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring a permit from the department of natural resources for any preparation plant.

Be it enacted by the Legislature of West Virginia:

That section five, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.**§20-5A-5. Prohibitions; permits required.**

1 (a) The chief may, after public notice and opportunity
2 for public hearing, issue a permit for the discharge or
3 disposition of any pollutant or combination of pollutants
4 into waters of this state upon condition that such dis-
5 charge or disposition meets or will meet all applicable
6 state and federal water quality standards and effluent
7 limitations and all other requirements of this article.

8 (b) It shall be unlawful for any person, unless he holds
9 a permit therefor from the department, which is in full
10 force and effect, to:

11 (1) Allow sewage, industrial wastes or other wastes,
12 or the effluent therefrom, produced by or emanating from
13 any establishment to flow into the waters of this state;

14 (2) Make, cause or permit to be made any outlet, or
15 substantially enlarge or add to the load of any existing
16 outlet, for the discharge of sewage, industrial wastes or
17 other wastes, or the effluent therefrom, into the waters
18 of this state;

19 (3) Acquire, construct, install, modify or operate a
20 disposal system or part thereof for the direct or indirect
21 discharge or deposit of treated or untreated sewage,
22 industrial wastes or other wastes, or the effluent there-
23 from, into the waters of this state, or any extension to
24 or addition to such disposal system;

25 (4) Increase in volume or concentration any sewage,
26 industrial wastes or other wastes in excess of the dis-
27 charges or disposition specified or permitted under any
28 existing permit;

29 (5) Extend, modify or add to any establishment, the
30 operation of which would cause an increase in the volume
31 or concentration of any sewage, industrial wastes or
32 other wastes discharging or flowing into the waters of the
33 state;

34 (6) Construct, install, modify, open, reopen, operate
35 or abandon any mine, quarry or preparation plant, or

36 dispose of any refuse or industrial wastes or other wastes
37 from any such mine or quarry or preparation plant:
38 *Provided*, That the department's permit shall only be
39 required wherever the aforementioned activities cause,
40 may cause or might reasonably be expected to cause a
41 discharge into or pollution of waters of the state, except
42 that a permit shall be required for any preparation plant:
43 *Provided, however*, That unless waived in writing by the
44 chief, every application for a permit to open, reopen or
45 operate any mine, quarry or preparation plant or to dis-
46 pose of any refuse or industrial wastes or other wastes
47 from any such mine or quarry or preparation plant shall
48 contain a plan for abandonment of such facility or opera-
49 tion, which plan shall comply in all respects to the re-
50 quirements of this article. Such plan of abandonment
51 shall be subject to modification or amendment upon
52 application by the permit holder to the chief and ap-
53 proval of such modification or amendment by the chief;

54 (7) Operate any disposal well for the injection or
55 reinjection underground of any industrial wastes, in-
56 cluding, but not limited to, liquids or gases, or convert
57 any well into such a disposal well or plug or abandon
58 any such disposal well.

59 (c) Where a person has a number of outlets emerging
60 into the waters of this state in close proximity to one
61 another, such outlets may be treated as a unit for the
62 purposes of this section, and only one permit issued for all
63 such outlets.

CHAPTER 93

(S. B. 568—Originating in the Senate Committee on Natural Resources)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section four, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary of surface-mining reclamation supervisors and inspectors.

Be it enacted by the Legislature of West Virginia:

That section four, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

1 The director shall determine the number of surface-
2 mining reclamation supervisors and inspectors needed
3 to carry out the purposes of this article and appoint them
4 as such. All such appointees shall be qualified civil
5 service employees, but no person shall be eligible for
6 such appointment until he has served in a probationary
7 status for a period of one year to the satisfaction of the
8 director of natural resources: *Provided*, That the pro-
9 visions of this section shall not affect the status of per-
10 sons employed on the effective date of this article as
11 reclamation inspectors under the former provisions of
12 this article, if such persons are qualified civil service
13 employees.

14 Every surface-mining reclamation supervisor or in-
15 specter shall be paid not less than fifteen thousand dollars
16 per year.

♦

CHAPTER 94

(Com. Sub. for H. B. 1618—By Mr. Allen and Mr. Chafin)

[Passed March 17, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of natural resources and law enforcement thereof; providing for the chief conservation officer, other conservation officers, and special and emergency conservation officers; and providing for designation of area of primary residence of each conser-

vation officer, subsistence allowance for the chief conservation officer and other conservation officers, and expenses therefor.

Be it enacted by the Legislature of West Virginia:

That section one, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES;
MOTORBOATING.**

**§20-7-1. Chief conservation officer; conservation officers; special
and emergency conservation officers; subsistence allow-
ance; expenses.**

1 The department's law-enforcement policies, practices and
2 programs shall be under the immediate supervision and direc-
3 tion of the department law-enforcement officer selected by the
4 director and designated as chief conservation officer as pro-
5 vided in article one hereof.

6 Under the supervision of the director, the chief conserva-
7 tion officer shall organize, develop and maintain law-enforce-
8 ment practices, means and methods geared, timed and adjust-
9 able to seasonal, emergency and other needs and requirements
10 of the department's comprehensive natural resources program.
11 All department personnel detailed and assigned to law-enforce-
12 ment duties and services hereunder shall be known and desig-
13 nated as conservation officers and shall be under the imme-
14 diate supervision and direction of the chief conservation officer.
15 All such conservation officers shall be trained, equipped and
16 conditioned for duty and services wherever and whenever re-
17 quired by department law-enforcement needs.

18 The chief conservation officer, acting under supervision of
19 the director, is authorized to select and appoint emergency con-
20 servation officers for a limited period of time for effective en-
21 forcement of the provisions of this chapter when considered
22 necessary because of emergency or other unusual circum-
23 stances. The emergency conservation officers shall be selected
24 from qualified civil service personnel of the department, except
25 in emergency situations and circumstances when the director
26 may designate such officers, without regard to such require-

27 ments and qualifications, to meet law-enforcement needs.
28 Emergency conservation officers shall exercise all powers and
29 duties prescribed in section four of this article for full-time
30 salaried conservation officers except the provisions of sub-
31 division (8).

32 The chief conservation officer, acting under supervision of
33 the director, is also authorized to select and appoint as
34 special conservation officers any full-time civil service em-
35 ployee of the department who is assigned to, and has direct
36 responsibility for management of, an area owned, leased or
37 under the control of the department and who has satisfactorily
38 completed a course of training established and administered
39 by the chief conservation officer, when such action is deemed
40 necessary because of law-enforcement needs. The powers and
41 duties of a special conservation officer, appointed under
42 this provision, shall be the same within his assigned area as
43 prescribed for full-time salaried conservation officers. The
44 jurisdiction of such persons appointed as a special conserva-
45 tion officer, under this provision, shall be limited to the
46 department area or areas to which he is assigned, resides on
47 and directly manages.

48 The chief conservation officer, acting under supervision of
49 the director, is also authorized to appoint as special con-
50 servation officers any full-time civil service forest fire control
51 personnel who have satisfactorily completed a course of train-
52 ing established and administered by the chief conservation
53 officer. The jurisdiction of forest fire control personnel
54 appointed as special conservation officers shall be limited to
55 the enforcement of the provisions of article three of this
56 chapter.

57 The chief conservation officer, with the approval of the
58 director, shall have the power and authority to revoke any
59 such appointment of an emergency conservation officer or
60 of a special conservation officer at any time.

61 Conservation officers shall be subject to seasonal or other
62 assignment and detail to duty whenever and wherever required
63 by the functions, services and needs of the department.

64 The chief conservation officer shall designate the area of

65 primary residence of each conservation officer, including him-
66 self, and in lieu of providing quarters and meals in such area
67 as designated and assigned, the chief conservation officer and
68 each full-time uniformed conservation officer, whose primary
69 duty is law enforcement, shall be paid, in addition to salary, a
70 subsistence allowance to be provided for by appropriation of
71 the Legislature. Since the area of business activity of the de-
72 partment is actually anywhere within the territorial confines of
73 the state of West Virginia, such subsistence allowance shall be
74 paid as the most convenient means of providing meals and
75 quarters in the area of assignment; such subsistence allowance
76 shall be paid, together with actual expenses incurred, when-
77 ever duties are performed outside the area of primary assign-
78 ment and still within the state.

CHAPTER 95

(Com. Sub. for H. B. 1059—By Mr. Goldstrom and Mrs. Withrow)

[Passed March 1, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT directing the chief of the division of water resources to provide for the destruction and removal of a dam on the Cacapon River.

Be it enacted by the Legislature of West Virginia:

DEPARTMENT OF NATURAL RESOURCES.

§1. Destruction of dam on the Cacapon River.

1 The chief of the division of water resources of the depart-
2 ment of natural resources is hereby directed, under the
3 supervision of the director of the department of natural re-
4 sources, to provide for the safe and expeditious destruction and
5 removal of the formerly owned Potomac light and power
6 company dam, located on the Cacapon River in Morgan
7 County, now owned by the department.

CHAPTER 96

(Com. Sub. for H B. 1235—By Mr Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 17, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact sections two and two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of certain state officers and relating to increasing the salaries of certain appointive state officers; effective date; and provisions relating to filing of sworn statement by state appointive officer as to compensation relative to his employees, with state officer's increase contingent thereon.

Be it enacted by the Legislature of West Virginia:

That sections two and two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

§6-7-2. Salaries of certain state officers.

1 Effective on and after the first Monday after the second
2 Wednesday in January, one thousand nine hundred seventy-
3 seven, the salary of the governor shall be fifty thousand dollars
4 per year.

5 The salary of the attorney general shall be thirty-five thou-
6 sand dollars per year; the salary of the auditor shall be thirty-
7 two thousand five hundred dollars per year; the salary of the
8 secretary of state shall be thirty thousand dollars per year; the
9 salary of the commissioner of agriculture shall be thirty-two
10 thousand five hundred dollars per year; and the salary of the
11 state treasurer shall be thirty-five thousand dollars per year.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

1 Notwithstanding any other provision of this code to the
2 contrary, each of the following named appointive state officers

3 shall be appointed by the governor, by and with the advice and
4 consent of the Senate. Each of such appointive state officers
5 shall serve at the will and pleasure of the governor for the
6 term for which the governor was elected and until the respec-
7 tive state officers' successors have been appointed and quali-
8 fied. Each of such appointive state officers shall hereafter be
9 subject to the existing qualifications for holding each such re-
10 spective office and each shall have and is hereby granted all
11 of the powers and authority and shall perform all of the func-
12 tions and services heretofore vested in and performed by virtue
13 of existing law respecting each such office. Beginning on the
14 first day of July, one thousand nine hundred seventy-six, the
15 annual salary of each such named appointive state officer shall
16 be as follows:

17 The commissioner of highways, thirty-five thousand dollars;
18 director of mental health, thirty thousand dollars; commissioner
19 of commerce, twenty-five thousand dollars; tax commissioner,
20 twenty-seven thousand five hundred dollars; director of depart-
21 ment of natural resources, twenty-seven thousand five hundred
22 dollars; commissioner of department of welfare, twenty-seven
23 thousand five hundred dollars; alcohol beverage control com-
24 missioner, twenty-five thousand dollars; commissioner of pub-
25 lic institutions, twenty-five thousand dollars; commissioner
26 of employment security, twenty-five thousand dollars; com-
27 missioner of labor, twenty-two thousand five hundred dol-
28 lars; director of personnel civil service commission, twenty-
29 two thousand five hundred dollars; superintendent of de-
30 partment of public safety, twenty-two thousand five hundred
31 dollars; insurance commissioner, twenty-two thousand five hun-
32 dred dollars; commissioner of motor vehicles, twenty-two
33 thousand five hundred dollars; commissioner of banking,
34 twenty-two thousand five hundred dollars; members of the
35 board of probation and parole, sixteen thousand dollars; non-
36 intoxicating beer commissioner, nineteen thousand dollars; state
37 historian and archivist, twenty thousand dollars; adjutant
38 general, twenty-one thousand five hundred dollars; director
39 of emergency services, eighteen thousand five hundred dollars;
40 director of veterans affairs, twenty-one thousand five hundred
41 dollars; members of the board of review of employment
42 security, fourteen thousand dollars; members of workmen's

43 compensation appeal board, fourteen thousand dollars; state
44 workmen's compensation commissioner, twenty-five thousand
45 dollars; finance and administration commissioner, twenty-five
46 thousand dollars; and director of the department of mines,
47 twenty-eight thousand five hundred dollars.

48 No increase in the salary of any appointive state officer
49 pursuant to this section shall be paid until and unless such ap-
50 pointive state officer shall have first filed with the state auditor
51 and the legislative auditor a sworn statement, on a form to be
52 prescribed by the attorney general, certifying that such spend-
53 ing unit is in compliance with any general law providing for a
54 salary increase for his employees. The attorney general shall
55 prepare and distribute such form to the affected spending units.

CHAPTER 97

(Com. Sub. for H. B. 1564—By Mr. Seibert)

[Passed May 15, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact sections one-c, one-d and one-e, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the salary and mileage allowance for the supervising inspector, oil and gas inspectors and oil and gas examining board.

Be it enacted by the Legislature of West Virginia:

That sections one-c, one-d and one-e, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. OIL AND GAS WELLS.

- §22-4-1c. Oil and gas inspectors—Supervising inspectors; tenure; oath and bond.
- §22-4-1d. Same—Eligibility for appointment; qualifications; salary; expenses; removal.
- §22-4-1e. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; chairman; oaths of members; meetings; powers and duties generally.

§22-4-1c. Oil and gas inspectors—Supervising inspectors; tenure; oath and bond.

1 Notwithstanding any other provisions of law, oil and gas
2 inspectors shall be selected, serve and be removed as in this
3 article provided.

4 The deputy director for oil and gas shall divide the state
5 so as to equalize, as far as practical, the work of each oil
6 and gas inspector. He may designate a supervising inspector
7 and other inspectors as may be necessary, and may designate
8 their places of abode, at points convenient to the accomplish-
9 ment of their work.

10 The deputy director for oil and gas shall make each ap-
11 pointment from among the three qualified eligible candi-
12 dates on the register having the highest grades. The direc-
13 tor of the department of mines or the deputy director for
14 oil and gas may, for good cause, at least thirty days prior
15 to making an appointment, strike any name from the regis-
16 ter. Upon striking any name from the register, the director
17 or deputy director, as the case may be, shall immediately
18 notify in writing each member of the oil and gas inspectors'
19 examining board of his action, together with a detailed state-
20 ment of the reasons therefor. Thereafter, the oil and gas
21 inspectors' examining board, after hearing, if it finds that the
22 action of striking such name was arbitrary or unreason-
23 able, may order the name of any candidate so stricken from
24 the register to be reinstated thereon. Such reinstatement
25 shall be effective from the date of removal from the register.

26 Any candidate passed over for appointment for three
27 years shall be automatically stricken from the register.

28 After having served for a probationary period of one
29 year to the satisfaction of the deputy director for oil and
30 gas and the director, an oil and gas inspector or supervising
31 inspector shall have permanent tenure until he becomes
32 seventy years of age, subject only to dismissal for cause
33 in accordance with the provisions of section one-d of this
34 article. No oil and gas inspector or supervising inspector
35 while in office shall be directly or indirectly interested as
36 owner, lessor, operator, stockholder, superintendent or en-
37 gineer of any oil or gas drilling or producing venture or

38 of any coal mine in this state. Before entering upon the
39 discharge of his duties as an oil and gas inspector or super-
40 vising inspector, he shall take the oath of office prescribed
41 by the constitution, and shall execute a bond in the penalty
42 of two thousand dollars, with security to be approved by
43 the director of the department of mines, conditioned upon
44 the faithful discharge of his duties, a certificate of which
45 oath and bond shall be filed in the office of the secretary of
46 state.

47 The supervising inspector and oil and gas inspectors shall
48 perform such duties as are imposed upon them by this
49 chapter, and related duties assigned by the deputy director
50 for oil and gas upon approval of the director.

§22-4-1d. Same—Eligibility for appointment; qualifications; salary; expenses; removal.

1 (a) No person shall be eligible for appointment as an
2 oil and gas inspector or supervising inspector unless, at
3 the time of his probationary appointment he (1) is a
4 citizen of West Virginia, in good health, and of good
5 character, reputation and temperate habits; (2) has had
6 at least ten years' practical experience in the oil and gas
7 industry, at least five years of which, immediately pre-
8 ceding his original appointment shall have been in the
9 oil and gas industry in this state: *Provided*, That a diploma
10 in geology or in mining or petroleum engineering shall be
11 considered the equivalent of five years' practical experience;
12 and (3) has good theoretical and practical knowledge of
13 oil and gas drilling and production methods, practices and
14 techniques, sound safety practices and applicable mining
15 laws.

16 (b) In order to qualify for appointment as an oil and
17 gas inspector or supervising inspector, an eligible applicant
18 shall submit to a written and oral examination by the
19 oil and gas inspectors' examining board and shall furnish
20 such evidence of good health, character and other facts
21 establishing eligibility as such board may require. If such
22 board finds after investigation and examination that an ap-
23 plicant (1) is eligible for appointment and (2) has passed
24 all written and oral examinations, the board shall add such

25 applicant's name and grade to the register of qualified eligible
26 candidates and certify its action to the deputy director for
27 oil and gas. No candidate's name shall remain on the register
28 for more than three years without requalifying.

29 (c) The salary of the supervising inspector shall be not
30 less than fifteen thousand two hundred twenty-two dollars
31 per annum and not more than fifteen cents per mile traveling
32 expenses. Salaries of inspectors shall be not less than thirteen
33 thousand three hundred twenty-five dollars per annum and
34 traveling expenses for personal car not more than fifteen
35 cents per mile. Within the limits provided by law, the
36 salary of each inspector and of the supervising inspector
37 shall be fixed by the deputy director for oil and gas, sub-
38 ject to the approval of the director of the department of
39 mines and oil and gas inspectors' examining board. In fixing
40 salaries of the oil and gas inspectors and of the supervising
41 inspector, the deputy director for oil and gas shall consider
42 ability, performance of duty and experience. No reim-
43 bursement for traveling expenses shall be made except upon
44 an itemized account of such expenses submitted by the in-
45 spector or supervising inspector, as the case may be, who
46 shall verify, upon oath, that such expenses were actually
47 incurred in the discharge of his official duties.

48 (d) An inspector or the supervising inspector, after having
49 received a permanent appointment, shall be removed from
50 office only for physical or mental impairment, incompetency,
51 neglect of duty, drunkenness, malfeasance in office, or other
52 good cause.

53 Proceedings for the removal of an oil and gas inspector
54 or the supervising inspector may be initiated by the deputy
55 director for oil and gas or the director of the department
56 of mines whenever either has reasonable grounds to believe
57 and does believe that adequate cause exists warranting re-
58 moval. Such a proceeding shall be initiated by a verified
59 petition, filed with the oil and gas inspectors' examining
60 board by the deputy director for oil and gas or the director,
61 setting forth with particularity the facts alleged. Not less
62 than twenty reputable citizens engaged in oil and gas drilling
63 and production operations in the state may petition the
64 deputy director for oil and gas or the director of the de-

65 department of mines for the removal of an inspector or the
66 supervising inspector. If such petition is verified by at least
67 one of the petitioners, based on actual knowledge of the
68 affiant, and alleges facts which, if true, warrant the removal
69 of the inspector or supervising inspector, the deputy director
70 for oil and gas or the director of the department of mines
71 shall cause an investigation of the facts to be made. If,
72 after such investigation, the deputy director for oil and
73 gas or the director finds that there is substantial evidence
74 which, if true, warrants removal of the inspector or super-
75 vising inspector, he shall file a petition with the oil and
76 gas inspectors' examining board requesting removal of the
77 inspector or supervising inspector.

78 On receipt of a petition by the deputy director for oil and
79 gas or by the director of the department of mines seek-
80 ing removal of an inspector or the supervising inspector,
81 the oil and gas inspectors' examining board shall promptly
82 notify the inspector or supervising inspector, as the case
83 may be, to appear before it at a time and place designated in
84 said notice, which time shall be not less than fifteen days
85 nor more than thirty days thereafter. There shall be attached
86 to the copy of the notice served upon the inspector or
87 supervising inspector a copy of the petition filed with such
88 board.

89 At the time and place designated in said notice, the
90 oil and gas inspectors' examining board shall hear all evidence
91 offered in support of the petition and on behalf of the
92 inspector or supervising inspector. Each witness shall be
93 sworn and a transcript shall be made of all evidence taken
94 and proceedings had at any such hearing. No continuance
95 shall be granted except for good cause shown.

96 The chairman of the board, the deputy director for oil
97 and gas, and the director of the department of mines shall
98 have power to administer oaths and subpoena witnesses.

99 An inspector or supervising inspector who shall willfully
100 refuse or fail to appear before such board, or having appeared,
101 shall refuse to answer under oath any relevant question on
102 the ground that his testimony or answer might incriminate
103 him, or shall refuse to accept a grant of immunity from

104 prosecution on account of any relevant matter about which
105 he may be asked to testify at such hearing before such
106 board, shall forfeit his position.

107 If, after hearing, the oil and gas inspectors' examining
108 board finds that the inspector or supervising inspector should
109 be removed, it shall enter an order to that effect. The decision
110 of the board shall be final and shall not be subject to judicial
111 review.

§22-4-1e. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; chairman; oaths of members; meetings; powers and duties generally.

1 There is hereby created an oil and gas inspectors' ex-
2 amining board consisting of five members who, except for
3 the public representative on such board, shall be appointed
4 by the governor, by and with the advice and consent of
5 the Senate. Members may be removed only for the same
6 causes and like manner as elective state officers. One mem-
7 ber of the board who shall be the representative of the public,
8 shall be a professor in the petroleum engineering department
9 of the school of mines at West Virginia University appointed
10 by the dean of said school; two members shall be persons
11 who by reason of previous training and experience may rea-
12 sonably be said to represent the viewpoint of independent oil
13 and gas operators; and two members shall be persons who
14 by reason of previous training and experience may reasonably
15 be said to represent the viewpoint of major oil and gas
16 producers.

17 The deputy director for oil and gas shall be an ex of-
18 ficio member of the board and shall serve as secretary of
19 the board without additional compensation, but he shall
20 have no right to vote with respect to any matter before the
21 board.

22 The members of the board, except the public representa-
23 tive, shall be appointed for overlapping terms of eight
24 years, except that the original appointments shall be for
25 terms of two, four, six and eight years, respectively. Any
26 member whose term expires may be reappointed by the
27 governor.

28 Each member of the board shall receive seventy-five dol-
29 lars per diem while actually engaged in the performance
30 of the work of the board; and shall receive mileage at the
31 rate of not more than fifteen cents for each mile actually
32 traveled going from the home of the member to the place
33 of the meeting of the board and returning therefrom, which
34 shall be paid out of the state treasury upon a requisition
35 upon the state auditor, properly certified by such members
36 of the board.

37 The public member shall serve as chairman of the board.

38 Members of the board, before performing any duty shall
39 take and subscribe to the oath required by section five, article
40 four of the constitution of West Virginia.

41 The board shall meet at such times and places as shall
42 be designated by the chairman. It shall be the duty of the
43 chairman to call a meeting of the board on the written
44 request of two members, or on the written request of the
45 deputy director for oil and gas or the director of the depart-
46 ment of mines. Notice of each meeting shall be given in
47 writing to each member by the secretary at least five days in
48 advance of the meeting. Three voting members shall con-
49 stitute a quorum for the transaction of business.

50 In addition to other powers and duties expressly set forth
51 elsewhere in this article, the board shall:

52 (1) Establish, and from time to time revise, forms of
53 application for employment as an oil and gas inspector and
54 supervising inspector and forms for written examinations to
55 test the qualifications of candidates, with such distinctions,
56 if any, in the forms for oil and gas inspector and supervising
57 inspector as the board may from time to time deem necessary
58 or advisable;

59 (2) Adopt and promulgate reasonable rules and regulations
60 relating to the examination, qualification and certification of
61 candidates for appointment, and relating to hearings for re-
62 moval of inspectors or the supervising inspector, required
63 to be held by this article. All of such rules and regulations
64 shall be printed and a copy thereof furnished by the secretary
65 of the board to any person upon request;

66 (3) Conduct, after public notice of the time and place
67 thereof, examinations of candidates for appointment. By
68 unanimous agreement of all members of the board, one or
69 more members of the board or an employee of the depart-
70 ment of mines may be designated to give to a candidate
71 the written portion of the examination;

72 (4) Prepare and certify to the deputy director for oil
73 and gas and the director of the department of mines a
74 register of qualified eligible candidates for appointment as
75 oil and gas inspectors or as supervising inspectors, with
76 such differentiation, if any, between the certification of can-
77 didates for oil and gas inspectors and for supervising in-
78 spectors as the board may from time to time deem neces-
79 sary or advisable. The register shall list all qualified eligible
80 candidates in the order of their grades, the candidate with
81 the highest grade appearing at the top of the list. After
82 each meeting of the board held to examine such candidates
83 and at least annually, the board shall prepare and submit
84 to the deputy director for oil and gas and the director
85 of the department of mines a revised and corrected register
86 of qualified eligible candidates for appointment, deleting from
87 such revised register all persons (a) who are no longer
88 residents of West Virginia, (b) who have allowed a calendar
89 year to expire without, in writing, indicating their continued
90 availability for such appointment, (c) who have been passed
91 over for appointment for three years, (d) who have be-
92 come ineligible for appointment since the board originally
93 certified that such persons were qualified and eligible for
94 appointment, or (e) who, in the judgment of at least three
95 members of the board, should be removed from the register
96 for good cause;

97 (5) Cause the secretary of the board to keep and pre-
98 serve the written examination papers, manuscripts, grading
99 sheets and other papers of all applicants for appointment
100 for such period of time as may be established by the board.
101 Specimens of the examinations given, together with the correct
102 solution of each question, shall be preserved permanently by the
103 secretary of the board;

104 (6) Issue a letter or written notice of qualification to
105 each successful eligible candidate;

106 (7) Hear and determine proceedings for the removal of
107 inspectors or the supervising inspector in accordance with
108 the provisions of this article;

109 (8) Hear and determine appeals of inspectors or the super-
110 vising inspector from suspension orders made by the deputy
111 director for oil and gas pursuant to the provisions of section
112 one-a of this article: *Provided*, That in order to appeal from
113 any order of suspension, an aggrieved inspector or super-
114 vising inspector shall file such appeal in writing with the oil
115 and gas inspectors' examining board not later than ten days
116 after receipt of the notice of suspension. On such appeal the
117 board shall affirm the action of the deputy director for oil and
118 gas unless it be satisfied from a clear preponderance of the
119 evidence that the deputy director for oil and gas has acted
120 arbitrarily;

121 (9) Make an annual report to the governor concerning
122 the administration of oil and gas inspection personnel in
123 the state service; making such recommendations as the board
124 considers to be in the public interest; and

125 (10) Render such advice and assistance to the deputy
126 director for oil and gas as he shall from time to time de-
127 termine necessary or desirable in the performance of his
128 duties.

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CHAPTER 98

(Com. Sub. for S. B. 279—By Mr. Brotherton, Mr. President, and Mr. Benson)

[Passed March 16, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-c, relating to the West Virginia petroleum products franchise act; providing for definitions; providing certain provisions to which franchise agreements are subject; providing for certain disclosures relating to such agree-

ments; providing how such agreements may be terminated or canceled; providing when options to renew need not be honored and providing for damages and remedies for violations.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-c, to read as follows:

ARTICLE 11C. WEST VIRGINIA PETROLEUM PRODUCTS FRANCHISE ACT.

§47-11C-1. Short title.

§47-11C-2. Definitions.

§47-11C-3. Franchise agreement.

§47-11C-4. Disclosures to prospective dealers.

§47-11C-5. Termination of or refusal to renew franchise; notice; grounds.

§47-11C-6. Damages; remedies.

§47-11C-7. Application.

§47-11C-8. Effective date.

§47-11C-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Petroleum Products Franchise Act."

§47-11C-2. Definitions.

- 1 As used in this article:

- 2 (1) "Dealer" means any person, other than an
- 3 agent or employee of a producer, who is engaged in
- 4 the retail sale of petroleum products under a franchise
- 5 agreement as defined by this section;

- 6 (2) "Franchise" or "franchise agreement" means a
- 7 written agreement between a producer and a dealer
- 8 under which the dealer is granted the right to use
- 9 a trademark, trade name, service mark, or other
- 10 identifying symbol or name owned by the producer,
- 11 or a written agreement between a producer and a
- 12 dealer by which the dealer is granted the right to
- 13 occupy premises owned, leased or controlled by the
- 14 producer, for, the purpose of engaging in the retail
- 15 sale of petroleum products of the producer;

16 (3) "Good cause" means failure of the dealer to make
17 good faith effort to comply with any material requirement
18 of a franchise agreement;

19 (4) "Producer" means every person who produces,
20 refines, manufactures, processes or otherwise alters any
21 motor fuel and other petroleum products for sale or use
22 in this state;

23 (5) "Service station" means any filling station, store,
24 garage or other place of business in this state for the
25 retail sale of motor fuel and other petroleum products.

§47-11C-3. Franchise agreement.

1 Every franchise agreement between a producer and a
2 dealer shall be subject to the following provisions
3 whether or not they are expressly set forth in the
4 agreement:

5 (1) The term of the initial agreement between the
6 producer and the dealer relating to specific premises
7 shall not be less than one year; the term of the
8 second agreement between the producer and the
9 dealer, relating to the same premises, shall also be
10 for not less than one year; and the term of all subsequent
11 agreements between the producer and the dealer,
12 relating to the same premises, shall be of not less
13 than two years. This subdivision shall not be con-
14 strued to require a term of greater duration than the
15 remainder of the term to which the producer is entitled
16 under its lease without regard to any renewal rights
17 which the producer may have;

18 (2) No producer shall require a dealer to keep his
19 station open for business more than seventy-two hours
20 per week;

21 (3) The dealer alone shall determine his retail sale
22 price of the products listed in the franchise agreement;

23 (4) In the absence of any express agreement, the
24 dealer shall not be required to participate financially
25 in the use of any premium, coupon, giveaway or rebate

26 in the operation of his retail outlet: *Provided*, That the
27 producer may require the dealer to distribute to cus-
28 tomers premiums, coupons or giveaways which are
29 furnished to the dealer at the expense of the producer;

30 (5) In the event of any termination, cancellation
31 or failure to renew, whether by mutual agreement
32 or otherwise, a producer shall, within thirty days, tender
33 to the dealer, for the products he sold to the dealer
34 which the dealer has been unable to sell, except to the
35 extent that such may be damaged or not resalable, the
36 full price originally paid by the dealer for the products:
37 *Provided*, That the producer shall have the right to apply
38 the proceeds against any existing indebtedness owed to
39 him by the dealer and that such repurchase obligation is
40 conditioned upon there being no other claims or liens
41 against such products by or on behalf of other creditors of
42 the dealer. Such repurchase shall not constitute a waiver
43 of the dealer's other rights and remedies under this
44 article. If the producer does not make such tender within
45 thirty days, the dealer may sell the products for a
46 price which is not less than the full price originally paid
47 by the dealer for such products, and shall have a cause
48 of action against the producer for the balance;

49 (6) The right of either party to a trial by jury or to
50 the interposition of counterclaims or crossclaims shall not
51 be waived;

52 (7) Liability imposed on, and rights granted to, and
53 person by this article shall not be waived;

54 (8) The dealer shall not be required to forego his
55 right of free association with other dealers for any lawful
56 purpose;

57 (9) No transfer or assignment of a franchise by a
58 dealer to a qualified transferee or assignee shall be un-
59 reasonably disapproved by the producer;

60 (10) No producer shall require any dealer to sell
61 exclusively any products, other than petroleum products,
62 that such producer offers for sale.

§47-11C-4. Disclosures to prospective dealers.

1 A producer shall disclose in writing to any pros-
2 pective dealer the following information, before any
3 franchise is concluded:

4 (1) The gallonage volume history, if any, of the lo-
5 cation under negotiation for and during the three-year
6 period immediately past or for the entire period which the
7 location has been supplied by the producer, whichever
8 is shorter;

9 (2) The name and last known home address of the
10 previous dealer or dealers for the last three years, or for
11 and during the entire period for which the location has
12 been supplied by the producer, whichever is shorter,
13 and the reason or reasons for the termination of each
14 dealer franchise;

15 (3) Any legally binding commitments for the sale,
16 demolition or other disposition of the location;

17 (4) The training programs, if any, and the specified
18 goods and services the producer will provide for and to
19 the dealer;

20 (5) Full disclosure of any and all obligations which
21 will be required of the dealer, including, but not limited
22 to, any obligation to exclusively deal in any of the products
23 of the producer, its subsidiaries, any other company
24 or any advertising and promotional items that the dealer
25 must accept;

26 (6) Full disclosure of all restrictions on the sale,
27 transfer, renewal and termination of the agreement.

§47-11C-5. Termination of or refusal to renew franchise; notice; grounds.

1 (1) No producer directly or indirectly through
2 any officer, agent or employee shall terminate, cancel,
3 or refuse to renew a franchise without good cause or
4 other grounds as provided in this section, and without
5 having first given written notice to the dealer. Such
6 notice shall contain a statement of the producer's in-

7 tention to terminate, cancel, or refuse to renew, the
8 reasons therefor, the date on which such action shall
9 take effect, and a reference to this article and the reme-
10 dies available to such dealer. Such notice must be
11 given at least sixty days in advance of the action to be
12 taken, except where the premises have been abandoned
13 by the dealer for five consecutive days or where the
14 producer and dealer mutually agree in writing to a
15 shorter notice period. In circumstances where it would
16 not be reasonable to provide advance notice of sixty days,
17 the franchiser shall provide notice at the earliest date as
18 is reasonably practicable. In no event shall any such
19 notice period be less than thirty days.

20 (2) It shall be a violation of this article for any pro-
21 ducer to directly or indirectly terminate, cancel or fail to
22 renew an agreement with the dealer unless the termina-
23 tion, cancellation or failure to renew is for good cause.
24 Good cause includes but is not limited to:

25 (a) Where the dealer has filed for or has been declared
26 bankrupt or has petitioned for a reorganization, creditor
27 arrangement or insolvency under the applicable statutes;

28 (b) Where there has been dissolution of a partnership
29 or corporation or other entity carrying on the business;

30 (c) Where the producer has lost its right to grant
31 possession of the premises;

32 (d) Where there has been willfull or malicious de-
33 struction of the property of the producer by the
34 dealer;

35 (e) Where there has been failure to pay financial
36 obligations to the lessor producer when due, includ-
37 ing, but not limited to, rents or payment for gasoline,
38 petroleum products or accessories supplied to the lessee
39 dealer by the lessor producer;

40 (f) Where there has been adulteration, commingling,
41 mislabeling or misbranding of products supplied by the
42 producer;

43 (g) Where there has been failure by the dealer to

44 comply with federal, state or local laws or regulations
45 which are related to the operation of the gasoline service
46 station business and which may affect the relationship
47 between the producer and the dealer and such failure
48 to comply therewith has or may have an adverse effect
49 on the producer;

50 (h) Where there has been a conviction of the dealer
51 of a criminal offense which is related to the operation
52 of the business or would affect the ability of the dealer
53 to operate the business or would tend to defame the
54 reputation of the producer;

55 (i) Where there has been the death or other inca-
56 pacity of the dealer to manage his station;

57 (j) Where the producer totally withdraws from mar-
58 keting in the state in which the leased property is located;

59 (k) Where there has been the receipt by the producer
60 of twenty-four written bona fide customer complaints
61 concerning the dealer's quality of service or unsanitary
62 restrooms within any twelve-month period;

63 (l) Where there has been expropriation, appropriation,
64 condemnation, or other taking of the premises, in whole
65 or in part, pursuant to the power of eminent domain;
66 or

67 (m) Where there has been substantial damage to or
68 loss of the premises covered by the agreement.

69 (3) Nothing in subsection two shall prohibit termina-
70 tion, cancellation or failure to renew:

71 (a) If there is a failure on the part of the producer
72 and the dealer to agree upon the terms of a renewal
73 agreement where both parties have acted in good faith
74 in trying to effect such a renewal;

75 (b) If there is a mutual termination executed by the
76 parties;

77 (c) Where there is such cause for termination as a
78 court of competent jurisdiction might find to be reason-
79 able and just under all of the circumstances; or

80 (d) If the producer intends to use the premises for
81 purposes other than the sale of motor fuel: *Provided,*
82 That motor fuel may not be sold for a period of two years
83 following the date of termination, cancellation or failure
84 to honor the option to renew.

§47-11C-6. Damages; remedies.

1 (1) Any producer or dealer, aggrieved by a violation
2 of this article may bring an action for legal or equitable
3 relief, including reasonable attorney fees, in the circuit
4 court of the county in which the franchised premises are
5 located.

6 (2) No action may be brought under the provisions of
7 this article for a cause of action which arises more than
8 two years prior to the date on which such action is
9 brought.

§47-11C-7. Application.

1 This article shall not apply to a franchise granted prior
2 to the effective date of this article provided that a renewal
3 or extension of such a franchise shall not be excluded
4 from the application of this article.

§47-11C-8. Effective date.

1 This article shall take effect on the first day of July,
2 one thousand nine hundred seventy-six.

CHAPTER 99

(S. B. 33—By Mr. Galperin)

[Passed March 16, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to requiring the West Virginia board of pharmacy to prepare list of one hundred most commonly used drugs by brand name and approved generic

equivalent; and requiring pharmacists and drugstores to post such list of drugs, their prices and professional services offered by the particular pharmacy.

Be it enacted by the Legislature of West Virginia:

That article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a, to read as follows:

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-12a. List of drugs and prices; posting required; penalties for failure to comply.

1 The West Virginia board of pharmacy shall annually
2 in the month of August prepare a list of not less than one
3 hundred most commonly prescribed prescription drugs by
4 brand name and approved generic equivalent, if available,
5 along with their most commonly used strengths and
6 quantity prescribed. Such list shall also display in promi-
7 nent print all professional or convenience services per-
8 formed by the particular pharmacy and the same shall
9 be distributed along with rules and regulations for
10 posting to each pharmacy. The determination by the
11 board of pharmacy as to which drugs are to be in-
12 cluded on the list shall be final. The West Virginia board
13 of pharmacy shall furnish forms to list the one hundred
14 drugs and the professional or convenience services and
15 these forms are to be used to display the required infor-
16 mation.

17 The current list of the one hundred or more most com-
18 monly prescribed drugs by brand name and approved
19 generic equivalent, if available, shall be conspicuously
20 posted in each pharmacy registered with the board. After
21 each prescription drug listed, the name of the manufac-
22 turer and the current selling price shall be clearly indi-
23 cated for that prescription by the pharmacy. The price of
24 any drug offered for sale shall be available and shall be
25 quoted by the pharmacy upon request.

26 The "current selling" price means the price above
27 which the listed drug may not be sold to the purchaser
28 by the pharmacist. A pharmacy may change the
29 current selling price and posting of such price at any
30 time.

31 Pursuant to section nineteen of this article, the board
32 of pharmacy shall establish and require compliance with
33 all rules and regulations necessary to implement this
34 section.

CHAPTER 100

(Com. Sub. for H. B. 1469—By Mr. Toney and Mr. Tompkins)

[Passed March 11, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pardon, reprieve, commutation or parole; notice to be given to sentencing judge and prosecuting attorney.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting paroles.

1 The board of probation and parole, whenever it shall be of
2 the opinion that the best interests of the state and of the
3 prisoner will be subserved thereby, and subject to the limita-
4 tions hereinafter provided, shall have authority to release any
5 such prisoner on parole for such terms and upon such con-
6 ditions as are provided by this article. Any prisoner of a peni-
7 tentiary of this state, to be eligible for parole:

8 (1) Shall have served the minimum term of his indeter-
9 minate sentence, or shall have served one third of his definite
10 term sentence, as the case may be;

11 (2) Shall not be under punishment or in solitary confine-
12 ment for any infraction of prison rules;

13 (3) Shall have maintained a record of good conduct in
14 prison for a period of at least three months immediately pre-
15 ceding the date of his release on parole;

16 (4) Shall have satisfied the board that, if released on parole,
17 he will conduct himself in a lawful manner and that his re-
18 lease is not incompatible with the best interests and welfare of
19 society generally.

20 Except in the case of one serving a life sentence, no
21 person who has been previously twice convicted of a felony may
22 be released on parole until he has served the minimum term
23 provided by law for the crime for which he was convicted.
24 No person sentenced for life may be paroled until he has
25 served ten years, and no person sentenced for life who has
26 been previously twice convicted of a felony may be paroled
27 until he has served fifteen years. In the case of a person
28 sentenced to any penal institution of this state, it shall
29 be the duty of the board, as soon as such person becomes
30 eligible, to consider the advisability of his or her release
31 on parole. If, upon such consideration, parole be denied,
32 the board shall at least once a year reconsider and review
33 the case of every prisoner so eligible, which reconsideration
34 and review shall be by the entire board. If parole be denied,
35 the prisoner shall be promptly notified.

36 In the case of any person sentenced to or confined under
37 sentence in any city or county jail in this state, the board
38 shall act only upon written application for parole. If such
39 jail prisoner be under sentence on a felony conviction, the
40 provisions hereof relating to penitentiary prisoners shall apply
41 to and control his release on parole. If such person be serving
42 time on a misdemeanor conviction, he shall be eligible
43 for parole consideration, upon receipt of his written parole
44 application and after time for probation release by the sen-
45 tencing court or judge has expired.

46 The board shall, with the approval of the governor,
47 adopt rules and regulations governing the procedure in
48 the granting of parole. No provision of this article and
49 none of the rules and regulations adopted hereunder are
50 intended or shall be construed to contravene, limit or
51 otherwise interfere with or affect the authority of the gover-
52 nor to grant pardons and reprieves, commute sentences, remit
53 fines or otherwise exercise his constitutional powers of execu-
54 tive clemency.

55 The board shall have general supervisory control over
56 all court or county probation officers. It shall be charged
57 with the duty of supervising all probationers and parolees
58 whose supervision may have been undertaken by this state
59 by reason of any interstate compact entered into pursuant to
60 the uniform act for out-of-state parolee supervision.

61 When considering a penitentiary prisoner for release on
62 parole, the board of parole shall have before it an authen-
63 tic copy of or report on the prisoner's current criminal
64 record as provided through the department of public safety
65 of West Virginia, the United States department of justice
66 or other reliable criminal information sources and written
67 reports of the warden or superintendent of the penitentiary,
68 as the case may be, to which such prisoner is sentenced:

69 (1) On the prisoner's conduct record while in prison,
70 including a detailed statement showing any and all infrac-
71 tions of prison rules by the prisoner and the nature and
72 extent of discipline and punishment administered therefor;

73 (2) On improvement or other changes noted in the pris-
74 oner's mental and moral condition while in prison, including
75 a statement expressive of the prisoner's current attitude
76 toward society in general, toward the judge who sentenced
77 him, toward the prosecuting attorney who prosecuted him,
78 toward the policeman or other officer who arrested him and
79 toward the crime for which he is under sentence and his
80 previous criminal record;

81 (3) On the prisoner's industrial record while in prison,
82 showing the nature of his prison work or occupation and
83 the average number of hours per day he has been employed

84 in prison industry and recommending the nature and kinds of
85 employment which he is best fitted to perform and in which
86 he is most likely to succeed when he leaves prison;

87 (4) On physical, mental and psychiatric examinations, of the
88 prisoner conducted, insofar as practicable, within the two
89 months next preceding parole consideration by the board.

90 The board may waive the requirement of any such report
91 when not available or not applicable as to any prisoner
92 considered for parole but, in every such case, shall enter
93 in the record thereof its reason for such waiver.

94 Before releasing any penitentiary prisoner on parole,
95 the board of parole shall arrange for him to appear in
96 person before the board and the board may examine and
97 interrogate him on any matters pertaining to his parole,
98 including reports before the board made pursuant to the
99 provisions hereof. The board shall reach its own written
100 conclusions as to the desirability of releasing such pris-
101 oner on parole. The warden or superintendent shall furnish
102 all necessary assistance and cooperate to the fullest
103 extent with the board of parole. All information, records
104 and reports received by the board shall be kept on permanent
105 file.

106 The board and its designated agents shall at all times have
107 access to inmates imprisoned in any penal or correctional
108 institution of this state or in any city or county jail in this
109 state, and shall have power to obtain any information or aid
110 necessary to the performance of their duties from other de-
111 partments and agencies of the state or from any political sub-
112 division thereof.

113 The board shall, if so requested by the governor, investigate
114 and consider all applications for pardon, reprieve or com-
115 mutation and shall make recommendation thereon to the
116 governor.

117 Prior to making such recommendation and prior to releasing
118 any penitentiary person on parole the board shall notify the
119 sentencing judge and prosecuting attorney at least ten days
120 before such recommendation or parole.

CHAPTER 101

(S. B. 168—By Mr. Hatfield and Mr. Jones)

[Passed March 11, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article three-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to physician assistants; providing for definitions; rules and regulations of the board; certification and classification of physician assistants; temporary certification; recertification; responsibilities of supervising physician; identification requirements; limitations on physician assistants; unlawful use of title of physician assistant; unlawful representation as physician; and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That article three-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3A. ASSISTANTS TO PHYSICIANS.

- §30-3A-1. Definitions.
- §30-3A-2. Medical licensing board; rules and regulations; limitations; annual report.
- §30-3A-3. Certification.
- §30-3A-4. Temporary certification.
- §30-3A-5. Recertification.
- §30-3A-6. Reciprocity.
- §30-3A-7. Job description required; revocation or suspension of certification.
- §30-3A-8. Responsibilities of supervising physician; legal responsibility for physician assistant.
- §30-3A-9. Identification of physician assistant.
- §30-3A-10. Limitations on employment and duties of physician assistant.
- §30-3A-11. Fees.
- §30-3A-12. Unlawful use of title of "Physician Assistant"; penalty.
- §30-3A-13. Unlawful representation of physician assistant as a physician; penalty.

§30-3A-1. Definitions.

- 1 As used in this article the following terms shall have
- 2 the following meanings:

3 (a) "Board" means the medical licensing board of
4 West Virginia.

5 (b) "Type 'A' physician assistant" means an assistant
6 to a primary care physician who is a graduate of an ap-
7 proved program of instruction in primary health care,
8 who has passed the national certification examination and
9 is qualified to perform direct patient care services under
10 the supervision of the primary care physician.

11 (c) "Type 'B' physician assistant" means an assistant
12 to the physician who is a graduate of an approved pro-
13 gram for instruction in a recognized clinical specialty or
14 has received training from a physician adequate to qual-
15 ify him to perform patient services in that specialty as
16 defined by the supervising physician.

17 (d) "Supervising physician" means a doctor of medi-
18 cine, or podiatry permanently licensed in West Virginia
19 who assumes legal and supervisory responsibility for the
20 work or training of any physician assistant in his employ-
21 ment.

22 (e) "Approved program" means an educational pro-
23 gram for physician assistants approved and accredited by
24 the American medical association, or American podiatry
25 association.

26 (f) "Health care facility" means any licensed hospital,
27 nursing home, extended care facility, state health or
28 mental institution, clinic or physician's office.

**§30-3A-2. Medical licensing board; rules and regulations;
limitations; annual report.**

1 (a) The board shall promulgate rules and regulations
2 governing the extent to which physician assistants may
3 function within this state.

4 Such regulations shall provide:

5 (1) That the physician assistant shall be limited to the
6 performance of those services for which he is trained;
7 and

8 (2) That each physician assistant shall perform only

9 under the supervision and control of a physician per-
10 manently licensed in this state, but such supervision and
11 control shall not require the personal presence of the
12 supervising physician at the place or places, where ser-
13 vices are rendered: *Provided*, That the physician assis-
14 tant's normal place of employment shall be on the prem-
15 ises of his supervising physician. The supervising
16 physician may send the physician assistant off the
17 premises of the supervising physician to perform
18 duties at his direction, but no separate place of work
19 for the physician assistant shall be established, other
20 than premises which are established by, and for the
21 practice of the supervising physician.

22 (b) In promulgating such rules and regulations, the
23 board shall allow the physician assistant to perform those
24 procedures and examinations submitted to the board in
25 the job description pursuant to section seven of this ar-
26 ticle.

27 (c) In addition thereto, the board shall compile and
28 publish an annual report that includes a list of currently
29 certified physician assistants, their employers and loca-
30 tion in the state; a list of approved programs; the number
31 of graduates per year of such approved programs and the
32 number of physician assistants from other states practic-
33 ing in West Virginia.

§30-3A-3. Certification.

1 (a) The board shall certify as a Type A physician
2 assistant any person who files an application and furnishes
3 evidence to the board that he has met the following
4 standards for qualification for the type of physician
5 assistant certificate for which he has applied:

6 (1) Shall be a graduate of an approved program of
7 instruction in primary health care, and

8 (2) Shall successfully have passed the examination for
9 a primary care physician assistant and be certified by the
10 national board of medical examiners, and

11 (3) Shall be of good moral character.

12 (b) The board may certify as a Type B physician
13 assistant any person who files an application and fur-
14 nishes evidence to the board that he has met the following
15 standards for qualification for the type of physician
16 assistant certificate for which he has applied:

17 (1) Shall be a graduate of an approved program in a
18 recognized clinical specialty, or

19 (2) Shall have received specialized training and ex-
20 perience from a physician adequate for him to perform
21 patient services in that specialty, and

22 (3) Shall be of good moral character.

23 (c) Certification of an assistant to a physician prac-
24 ticing the specialty of ophthalmology shall neither be
25 required nor permitted under this article.

§30-3A-4. Temporary certification.

1 When any graduate of an approved program submits an
2 application to the board, accompanied by a job description
3 in conformity with section seven of this article, for a Type
4 A physician assistant certificate, the board shall issue to
5 such applicant a temporary certificate allowing such ap-
6 plicant to function as a Type A physician assistant for
7 the period of one year. Said temporary certificate may be
8 renewed for one additional year upon the request of the
9 supervising physician. A Type A physician assistant
10 who has not been certified as such by the national
11 board of medical examiners will be restricted to
12 work under the direct supervision of the supervising
13 physician.

14 When any person who meets the qualifications for a
15 Type B physician assistant as defined in this section and
16 who submits an application accompanied by a job descrip-
17 tion for a Type B physician assistant certificate, the board
18 may certify such applicant as a Type B physician assistant
19 for a period of four months. Upon expiration of the four-
20 month temporary certification, the board may certify the
21 applicant as a Type B physician assistant. During the
22 period of temporary certification, the Type B physician

23 assistant shall be restricted to work under the direct
24 supervision of the supervising physician.

25 As of the effective date of this article, any person
26 holding a valid certificate from the board allowing such
27 person to practice as a physician assistant within this
28 state shall be eligible for certification for a period of one
29 year as a Type A or Type B physician assistant depending
30 upon such person's education, training or experience, as
31 determined by the board.

§30-3A-5. Recertification.

1 Certification of a Type B physician assistant shall be
2 subject to review and recertification annually for the
3 first five years following the first certification. Such
4 recertification shall require the supervising physician
5 of a Type B physician assistant to report to the board
6 on the status of the Type B physician assistant.
7 This report shall include a performance evaluation,
8 a summary of experience or continuing medical edu-
9 cation, and any proposed changes in job description.

§30-3A-6. Reciprocity.

1 The board may certify as a physician assistant in this
2 state, without examination, any person who has been so
3 certified or licensed by examination in another state of the
4 United States which has requirements substantially equiv-
5 alent to the requirements contained in this article.

§30-3A-7. Job description required; revocation or suspension of certification.

1 Any supervising physician making application to the
2 medical licensing board to employ either a Type A or Type
3 B physician assistant shall provide a job description which
4 shall set forth the range of medical services to be provided
5 by such assistant. Before employing a physician assistant
6 the supervising physician must obtain approval of the job
7 description from the board. The board shall have the
8 power to revoke or suspend any certification of an assis-
9 tant to a physician or podiatrist, for cause, after having
10 given the person an opportunity to be heard in the man-

11 ner provided by sections eight and nine, article one,
12 chapter thirty of this code.

§30-3A-8. Responsibilities of supervising physician; legal responsibility for physician assistant.

1 The supervising physician is responsible for observing,
2 directing and evaluating the work, records and practices
3 performed by the physician assistant pursuant to this
4 article. The supervising physician shall notify the medical
5 licensing board, in writing, of any termination of the
6 employment of his physician assistant within ten days of
7 said termination. The legal responsibility for any physi-
8 cian assistant shall remain that of the employing physician
9 or physicians at all times including occasions when the
10 assistant, under the direction and supervision of the
11 employing physician or physicians, aids in the care and
12 treatment of patients in health care facilities. Such
13 health care facilities shall not be legally responsible for
14 the actions or omissions of the physician assistant,
15 unless such physician assistant is an employee of the
16 facility.

§30-3A-9. Identification of physician assistant.

1 (a) When functioning as a physician assistant, the
2 physician assistant shall wear a name tag which identifies
3 the physician assistant as a physician assistant and which
4 also specifies the type of classification of such assistant
5 and the name of his supervising physician.

6 (b) A two and one-half by three and one-half inch card
7 of identification shall be furnished by the board upon
8 certification of the physician assistant and shall specify
9 the type of classification.

§30-3A-10. Limitations on employment and duties of physician assistant.

1 (a) A supervising physician shall not employ at any
2 one time more than two physician assistants.

3 (b) A physician assistant shall not sign prescriptions.
4 He shall not perform any service which his employing

5 supervising physician is not qualified to perform. Fur-
6 ther, he shall not perform any service which is not
7 included in his job description and approved as provided
8 in section seven of this article.

9 (c) Nothing in this article shall be construed to
10 authorize physician assistants to perform those specific
11 functions and duties delegated by law to those persons
12 licensed as chiropractors, dentists, dental hygienists,
13 optometrists, pharmacists, or certified as nurse anesthe-
14 tists.

§30-3A-11. Fees.

1 Each job description submitted by a licensed super-
2 vising physician or supervising physicians shall be ac-
3 companied by a fee of fifty dollars. A fee of five dollars
4 shall be charged for the annual renewal of the certificate.

**§30-3A-12. Unlawful use of title of "Physician Assistant";
penalty.**

1 It shall be unlawful for any person who is not certified
2 by the board as a physician assistant to use the title of
3 "physician assistant" or to represent to any other person
4 that he is a physician assistant. Any person who shall
5 violate the provisions of this section shall be guilty of a
6 misdemeanor, and, upon conviction thereof, shall be fined
7 in an amount not to exceed two thousand dollars.

**§30-3A-13. Unlawful representation of physician assistant
as a physician; penalty.**

1 It shall be unlawful for any physician assistant, as
2 defined in subdivisions (b) and (c); section one of this
3 article, to represent to any person that he is a physician or
4 surgeon. Any person who shall violate the provisions of
5 this section shall be guilty of a felony, and, upon convic-
6 tion thereof, shall be confined in the penitentiary for not
7 less than one nor more than two years, or be fined in an
8 amount not to exceed two thousand dollars.

CHAPTER 102

(Com. Sub. for H. B. 1005—By Mr. Sommerville)

[Passed February 20, 1976; in effect ninety days from passage. Disapproved by the Governor, and repassed notwithstanding his objections.]

AN ACT to amend and reenact section one, article five, and sections two, four and five, article eight, all of chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the profession of optometry; adding, within the definition of "prescription," optometrist to the licensed professionals who order drugs or medicines or combinations or mixtures thereof in certain cases; providing for the redefinition of the practice of optometry; exempting the practice of osteopathy from the provisions of law regulating the practice of optometry; accreditation of schools and colleges of optometry and the qualifications, education, examination and certification of applicants to practice optometry.

Be it enacted by the Legislature of West Virginia:

That section one, article five, and sections two, four and five, article eight, all of chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article

5. Pharmacists, Assistant Pharmacists and Drugstores.

8. Optometrists.

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-1. Definitions.

1 The following words and phrases as used in this article,
2 shall have the following meanings, unless the context other-
3 wise requires:

4 (1) The term "drug" means (a) articles in the official United
5 States Pharmacopoeia, or official National Formulary, or any
6 other supplement to either of them, which are intended for use
7 in the diagnosis, cure, mitigation, treatment or prevention of

8 disease in man or other animals, and (b) all other articles in-
9 tended for use in the diagnosis, cure, mitigation, treatment, or
10 prevention of disease in man or other animals, and (c) articles,
11 other than food, intended to affect the structure or any func-
12 tion of the body of man or other animals and (d) articles in-
13 tended for use as a component of any articles specified in
14 clause (a), (b), or (c).

15 (2) The term "poisonous drug" means any drug likely to
16 be destructive to adult human life in quantities of five grains
17 or less.

18 (3) The term "deleterious drug" means any drug likely to
19 be destructive to adult human life in quantities of sixty grains
20 or less.

21 (4) The term "habit-forming drug" means any drug which
22 has been or may be designated as habit forming under the
23 regulations promulgated in accordance with Section 502 (d)
24 of the Federal Food, Drug and Cosmetic Act of June twenty-
25 fifth, nineteen hundred and thirty-eight.

26 (5) The term "pharmacy" or "drugstore" or "apothecary"
27 shall be held to mean and include every store or shop or
28 other place (a) where drugs are dispensed, or sold at retail,
29 or displayed for sale at retail; or (b) where physicians'
30 prescriptions are compounded; or (c) which has upon it or
31 displayed within it, or affixed to or used in connection with
32 it, a sign bearing the word or words "pharmacy," "pharma-
33 cists," "apothecary," "drugstore," "drugs," "druggists," "medi-
34 cine," "medicine store," "drug sundries," "remedies" or any
35 word or words of similar or like import; or (d) any store
36 or shop or other place, with respect to which any of the
37 above words are used in any advertisement.

38 (6) The term "prescription" shall be held to mean an
39 order for drugs or medicines or combinations or mixtures
40 thereof, written or signed by a duly licensed physician,
41 dentist, optometrist, as authorized by section two, article
42 eight of this chapter, veterinarian or other medical practi-
43 tioner licensed to write prescriptions intended for the treat-
44 ment or prevention of disease of man or animals. The
45 term "prescription" shall also include orders for drugs or

46 medicines or combinations or mixtures thereof transmitted
47 to the pharmacist by word of mouth, telephone or other means
48 of communication by a duly licensed physician, dentist,
49 optometrist, veterinarian or other medical practitioner licensed
50 to write prescriptions intended for treatment or prevention of
51 disease of man or animals, and such prescriptions received
52 by word of mouth, telephone or other means of communication
53 shall be recorded in writing by the pharmacist and the record
54 so made by the pharmacist shall constitute the original prescrip-
55 tion to be filed by the pharmacist. All such prescriptions shall
56 be preserved on file for a period of five years, subject to in-
57 spection by the proper officer of the law. The above shall apply
58 except for narcotic prescriptions, when all narcotic laws and
59 regulations must be complied with.

60 (7) The term "cosmetic," which shall be held to include
61 "dentifrice" and "toilet article," means (a) articles intended
62 to be rubbed, poured, sprinkled, or sprayed on, introduced
63 into, or otherwise applied to the human body, or any part
64 thereof for cleansing, beautifying, promoting attractiveness, or
65 altering the appearance, and (b) articles intended for use
66 as a component of any such articles, except that such term
67 shall not include soap.

ARTICLE 8. OPTOMETRISTS.

§30-8-2. Practice of optometry defined.

§30-8-4. Registration prerequisite to practice of optometry; exceptions.

§30-8-5. Qualifications of applicant for registration; examination; duties of board as to examinations and certifications; education necessary for use of pharmaceutical agents.

§30-8-2. Practice of optometry defined.

1 Any one or any combination of the following practices
2 shall constitute the practice of optometry:

3 (a) The examination of the human eye, with or without
4 the use of drugs prescribable for the human eye, which drugs
5 may be used for diagnostic or therapeutic purposes for topical
6 application to the anterior segment of the human eye only, and,
7 by any method other than surgery, to diagnose, to treat or to
8 refer for consultation or treatment any abnormal condition of
9 the human eye or its appendages;

10 (b) The employment without the use of surgery of any in-
11 strument, device, method or diagnostic or therapeutic drug
12 for topical application to the anterior segment of the human
13 eye intended for the purpose of investigating, examining, treat-
14 ing, diagnosing, improving or correcting any visual defect or
15 abnormal condition of the human eye or its appendages;

16 (c) The prescribing and application or the replacement or
17 duplication of lenses, prisms, contact lenses, orthoptics, vision
18 training, vision rehabilitation, diagnostic or therapeutic drugs
19 for topical application to the anterior segment of the human
20 eye, or the furnishing or providing of any prosthetic device,
21 or any other method other than surgery necessary to correct
22 or relieve any defects or abnormal conditions of the human
23 eye or its appendages.

24 Nothing in this section shall be construed to permit an
25 optometrist to perform surgery, use drugs by injection or to
26 use or prescribe any drug for other than the specific purposes
27 authorized by this section.

**§30-8-4. Registration prerequisite to practice of optometry; excep-
tions.**

1 No person shall practice or offer to practice optometry in
2 this state without first applying for and obtaining a certificate of
3 registration for such purpose from the West Virginia board of
4 optometry; but the following persons, firms and corporations
5 are exempt from the operation of this article, except as
6 hereinafter provided:

7 (a) Persons who have heretofore been registered as op-
8 tometrists in this state, or who were engaged in the practice
9 of optometry in this state before the passage of any law by
10 this state regulating such practice, and who have heretofore
11 received from the board of examiners certificates of exemption
12 from examination;

13 (b) Persons authorized under the laws of this state to prac-
14 tice medicine and surgery or osteopathy;

15 (c) Persons, firms and corporations who sell eyeglasses
16 or spectacles in a store, shop or other permanently established
17 place of business on prescriptions from persons authorized

18 under the laws of this state to practice either optometry or
19 medicine and surgery;

20 (d) Persons, firms and corporations who manufacture or
21 deal in eyeglasses or spectacles in a store, shop or other
22 permanently established place of business, and who neither
23 practice nor attempt to practice optometry.

**§30-8-5. Qualifications of applicant for registration; examination;
duties of board as to examinations and certifications;
education necessary for use of pharmaceutical agents.**

1 An applicant for registration shall present satisfactory
2 evidence that he is at least eighteen years of age, of good
3 moral character and temperate habits, and has graduated from
4 a high school or secondary school, or has completed an equiva-
5 lent course of study approved by the West Virginia board of
6 optometry, has satisfactorily completed all preoptometry or
7 premedical college requirements and has graduated from a
8 school or college of optometry approved by said board. No
9 school or college of optometry shall be approved by the West
10 Virginia board of optometry unless at first it has been
11 accredited by a regional or professional accreditation organiza-
12 tion which is recognized by the national commission on ac-
13 creditation or the United States commission of education. Each
14 applicant shall submit to and be examined in all phases of
15 optometry as is provided by the school or college of optometry
16 and shall include, but not be limited to, anatomy and phys-
17 iology of the human eye, the use of instruments such as the
18 ophthalmoscope, retinoscope, tonometer, slit lamp biomicro-
19 scope, the general laws of optics and refraction, general and
20 ocular pharmacology, general and ocular pathology and other
21 such subjects or instrumentation as the board of optometry
22 may deem necessary.

23 The West Virginia board of optometry shall be responsible
24 to determine the educational training received by the applicant
25 from the schools and colleges of optometry, the educational
26 qualifications of each applicant and the administering of the
27 examination and certification of each applicant commensurate
28 with his education. No optometrist shall be registered or
29 certified to practice optometry in the state of West Virginia
30 in any area that is beyond the scope of his educational train-

31 ing as determined by the West Virginia board of optometry:
32 *Provided*, That any optometrist presently registered in the state
33 of West Virginia and who desires to employ the use of pharma-
34 ceutical agents must submit to the West Virginia board of
35 optometry evidence of satisfactory completion of all necessary
36 educational requirements as made mandatory by the West Vir-
37 ginia board of optometry: *Provided further*, That the West
38 Virginia board of optometry shall provide for continuing edu-
39 cational requirements to be completed from time to time by all
40 optometrists desiring to employ the use of pharmaceutical
41 agents.

CHAPTER 103

(S. B. 333—By Mr. Hatfield and Mr. Benson)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, five, seven, nine, ten, twelve and thirteen, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of chiropractic; creating a continuing education clause; increasing and updating the subjects for which applicants to practice chiropractic are to be examined; clarifying the title of doctor of chiropractic; updating the approved diagnostic instrument list; prohibiting use of physio-therapeutic devices unless qualified; and providing offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, five, seven, nine, ten, twelve and thirteen, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. CHIROPRACTORS.

§30-16-2. Definitions.

§30-16-5. Examination; certificates of license.

§30-16-7. License; annual renewal fee; effect of failure to renew; reinstatement.

- §30-16-9. Who may practice chiropractic; title of chiropractor.
§30-16-10. Use of diagnostic instruments and procedures.
§30-16-12. Chiropractor not permitted to perform certain acts; exception.
§30-16-13. Offenses; penalties.

§30-16-2. Definitions.

1 The following words, unless the context clearly indi-
2 cates otherwise, shall have the meaning ascribed to them
3 in this section:

4 (a) "Board" shall mean the West Virginia board of
5 chiropractic examiners;

6 (b) "Chiropractor" shall mean a practitioner of
7 chiropractic;

8 (c) "Chiropractic" is that science and art which
9 utilizes the inherent recuperative powers of the body
10 and the relationship between the musculo-skeletal struc-
11 tures and functions of the body, particularly of the spinal
12 column and the nervous system, in the restoration and
13 maintenance of health.

14 The practices and procedures which may be employed
15 by doctors of chiropractic are based on the academic and
16 clinical training received in and through accredited
17 chiropractic colleges. These shall include the use of
18 diagnostic, analytical and therapeutic procedures specifi-
19 cally including the adjustment and manipulation of the
20 articulations and adjacent tissues of the human body,
21 particularly of the spinal column; included is the treat-
22 ment of intersegmental disorders for alleviation of related
23 neurological aberrations. Patient care and management
24 is conducted with due regard for environmental and
25 nutritional factors, as well as first aid, hygiene, sanita-
26 tion, rehabilitation and physiological therapeutic proce-
27 dures designed to assist in the restoration and mainte-
28 nance of neurological integrity and homeostatic balance.

§30-16-5. Examination; certificates of license.

1 The examination for a license to practice chiropractic
2 shall be written and oral and shall cover the following
3 subjects: Anatomy, physiology, chemistry, pathology,
4 bacteriology, hygiene, diagnosis, gynecology, X ray, geri-

5 atrics, principles of chiropractic, and jurisprudence. The
6 list of subjects may be regrouped at the discretion of the
7 board.

8 The board shall issue certificates of license to all appli-
9 cants who shall successfully pass the said examination,
10 but no license shall be issued under this section until the
11 person applying therefor shall have paid to the board a
12 fee of twenty-five dollars.

13 All applicants shall be required to secure an average
14 grade of seventy-five percent in all subjects: *Provided*,
15 That sixty percent shall be the minimum grade in any
16 subject.

**§30-16-7. License; annual renewal fee; effect of failure to
renew; reinstatement.**

1 All holders of certificates of license to practice chiro-
2 practic in this state shall renew them annually on or
3 before the first day of July of each year: (1) By pay-
4 ment of a renewal fee of twenty-five dollars to the board,
5 and (2) except for those holders with forty years of
6 practice as of the effective date of this section, by pre-
7 sentation to the board of evidence of attendance of at
8 least twelve classroom hours of continuing education
9 each year. The board shall notify each certificate holder
10 by mail, at least thirty days prior to the first day of July
11 of each year, of the necessity of renewing his (or her)
12 certificate. The first annual renewal fee shall be due on
13 the first day of July, one thousand nine hundred sixty-
14 five.

15 The failure to renew a certificate of license to practice
16 chiropractic shall operate as an automatic suspension of
17 the rights and privileges granted by its issuance.

18 A certificate of license suspended by a failure to make
19 an annual renewal thereof as herein provided may be
20 reinstated by the board upon presentation of evidence of
21 attendance of at least twelve classroom hours of continu-
22 ing education for each year such license has been sus-
23 pended, payment of all fees that would have been paid
24 had the certificate holder maintained his certificate in

25 good standing and the payment to the board of a rein-
26 statement fee of not to exceed fifty dollars as determined
27 by the board; but no certificate shall be reinstated after
28 a lapse of three years. After a lapse of three years,
29 license may be issued only after the former certificate
30 holder subsequent to said lapse has passed the examina-
31 tion in this article provided.

§30-16-9. Who may practice chiropractic; title of chiropractor.

1 Every chiropractor who has complied with the pro-
2 visions of this article shall thereupon be entitled to prac-
3 tice chiropractic in this state. The title of chiropractor
4 shall be doctor of chiropractic and shall be designated
5 by the letters "D.C." The titles "D.C.", doctor of chiro-
6 practic, chiropractor, chiropractic physician are inter-
7 preted as the same.

§30-16-10. Use of diagnostic instruments and procedures.

1 Any chiropractor who has complied with the provisions
2 of this article may use any instrument, or procedure, for
3 the purpose of diagnosis and analysis of disease, or
4 abnormalities, provided such instruments are used in a
5 school approved by the American chiropractic association,
6 the international chiropractic association, or their succes-
7 sors.

§30-16-12. Chiropractor not permitted to perform certain acts; exception.

1 No chiropractor shall be permitted to prescribe any
2 medicine or drugs now or hereafter included in materia
3 medica, or to administer any such medicine or drugs; and
4 no chiropractor shall perform any minor or major sur-
5 gery, practice obstetrics or practice osteopathy, unless
6 duly licensed to do so by the laws of this state in addition
7 to his license to practice chiropractic; nor shall any chiro-
8 practor use any physio-therapeutic devices in his practice
9 until he has certified to the board that he has completed
10 at least ninety classroom hours in the use of these
11 procedures.

§30-16-13. Offenses; penalties.

1 Each of the following acts shall constitute a misde-
2 meanor, punishable upon conviction by a fine of not less
3 than fifty dollars nor more than three hundred dollars,
4 or by imprisonment in the county jail for not less than
5 thirty days nor more than one year, or both, in the dis-
6 cretion of the court, and each day any person shall so
7 violate any provisions of this article shall constitute a
8 separate and distinct offense:

9 (a) The obtaining of or attempt to obtain a license
10 by the use of fraud, deceit or willful misrepresentation;

11 (b) The practice, or attempting to practice, as a chiro-
12 practor without a license granted under the provisions
13 of this article, or practicing or attempting to practice
14 while said license is suspended, or after said license has
15 been revoked;

16 (c) The use of any title to induce belief that the user
17 of said title is engaged in the practice of chiropractic,
18 if the user of said title has not fully complied with the
19 provisions of this article;

20 (d) The buying, selling or fraudulent procurement
21 of any diploma of, or license to practice, chiropractic;

22 (e) The violation of any provision of this article regu-
23 lating the practice of chiropractors.

CHAPTER 104

(S. B. 327—By Mr. Savilla and Mr. Benson)

[Passed March 5, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to the incorporation of chiropractors.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen, to read as follows:

ARTICLE 16. CHIROPRACTORS.

§30-16-17. Chiropractic corporations.

1 One or more individuals, each of whom is licensed
2 to practice chiropractic within this state, may organize
3 and become a shareholder or shareholders of a chiro-
4 practic corporation. Individuals who may be practicing
5 chiropractic as an organization created otherwise than
6 pursuant to the provisions of this section may incor-
7 porate under and pursuant to this section. This section
8 is not intended to amend the statutory or common law
9 as it relates to associations or partnerships, except to
10 allow partnerships of chiropractors to organize as a chiro-
11 practic corporation.

12 A chiropractic corporation may render professional ser-
13 vice only through officers, employees and agents who
14 are themselves duly licensed to render chiropractic
15 service within this state. The term "employee" or
16 "agent" as used in this section, does not include secre-
17 taries, clerks, typists, paraprofessional personnel or other
18 individuals who are not usually and ordinarily con-
19 sidered by custom and practice to be rendering chiro-
20 practic services for which a license is required.

21 This section does not modify the law as it relates to
22 the relationship between a person furnishing chiroprac-
23 tic services and his client, nor does it modify the law
24 as it relates to liability arising out of such a professional
25 service relationship. Except for permitting chiropractic
26 corporations, this section is not intended to modify any
27 legal requirement or court rule relating to ethical stan-
28 dards of conduct required of persons providing chiro-
29 practic services.

30 A chiropractic corporation may issue its capital

31 stock only to persons who are duly licensed chiro-
32 practors.

33 When not inconsistent with this section, the orga-
34 nization and procedures of chiropractic corporations shall
35 conform to the requirements of article one, chapter
36 thirty-one of this code.

37 The West Virginia board of chiropractic examiners
38 may require that chiropractors under its licensing au-
39 thority must obtain its prior authorization before be-
40 ginning to act as a chiropractic corporation and may
41 require a fee of not more than fifty dollars for each
42 application for authorization to form a chiropractic
43 corporation. The board may adopt rules and regulations:
44 (1) To set reasonable standards for granting or refusing
45 prior approval, (2) to require appropriate information
46 therefor from a chiropractic corporation applicant, and
47 (3) to notify the secretary of state that certain persons
48 have been given authorization by the board to form a
49 chiropractic corporation.

50 Upon notification by the West Virginia board of chiro-
51 practic examiners of its approval, the secretary of state,
52 upon compliance by the incorporators with this section
53 and the applicable provisions of chapter thirty-one of
54 this code, may issue to the incorporators a certificate
55 of incorporation for the chiropractic corporation which
56 then may engage in practice through duly licensed or
57 otherwise legally authorized stockholders, employees and
58 agents.

59 A shareholder of a chiropractic corporation may sell
60 or transfer his shares of stock in such corporation only
61 to another individual who is duly licensed to practice
62 chiropractic in this state or back to the corporation. Any
63 chiropractic corporation shall cease to engage in the
64 practice of chiropractic upon being notified by the board
65 that any of its shareholders is no longer a duly licensed
66 chiropractor, or when any shares of such corporation
67 have been sold or disposed of to a person who is not
68 a duly licensed chiropractor: *Provided*, That the per-
69 sonal representative of a deceased shareholder shall have

70 a period, not to exceed twelve months from the date of
71 such shareholder's death, to dispose of such shares; but
72 nothing contained herein shall be construed as affecting
73 the existence of such corporation or its right to con-
74 tinue to operate for all lawful purposes other than the
75 practice of chiropractic.

76 The corporate name of a chiropractic corporation shall
77 contain the last name or names of one or more of its
78 shareholders: *Provided*, That if the rules or regulations
79 of the board so permit the corporate name may contain
80 or include the name or names of former shareholders
81 or of persons who were associated with a predecessor
82 partnership. The corporate name shall also contain the
83 words "chiropractic corporation" or the abbreviation
84 "C.C." The use of the word "company," "corporation"
85 or "incorporated" or any other words or abbreviations
86 in the name of a corporation organized under this article
87 which indicates that such corporation is a corporation,
88 other than the words "chiropractic corporation" or the
89 abbreviation "C.C.", is specifically prohibited.

;

CHAPTER 105

(Com. Sub. for S. B. 358—By Mr. Brotherton, Mr. President, and Mr. Rogerson)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the practice of physical therapy, licensing of persons engaging in the practice of physical therapy and the licensing of persons to act as physical therapy assistants; providing legislative findings and declarations of public policy; defining terms; requiring license for persons engaging in the practice of physical therapy and for persons acting as physical therapy assistants; providing an exception; relating to the circumstances under which a firm, association or corporation may engage in the practice of physical therapy;

prohibiting unauthorized practice of physical therapy; continuing the West Virginia state board of examiners and registration of physical therapists; changing the name of such board to the West Virginia board of physical therapy; increasing number of members of the board from three to five; relating to the appointment, qualifications, terms of office, oath, removal and payment of compensation and expenses of members of the board; relating to officers, meetings and quorum of the board; specifying powers and duties of the board; relating to the receipt and disbursement of funds by the board; establishing qualifications for the issuance of a license or temporary permit to engage in the practice of physical therapy; establishing qualifications for the issuance of a license or temporary permit to act as a physical therapy assistant; providing for examination of applicants; providing for the issuance of licenses and temporary permits, renewals thereof and fees therefor; authorizing the board to suspend or revoke a license or temporary permit and establishing the grounds therefor; authorizing said board to hold hearings; providing a time and place for such hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hearings; authorizing the board to issue subpoenas and subpoenas duces tecum in connection with such hearings; providing an automatic stay or suspension of certain orders of the board pending such hearings; relating to the costs for such hearings; providing for judicial review of decisions of the board entered following such hearings; providing for appeals to the supreme court of appeals; providing for legal counsel for the board; establishing criminal penalties; and providing for injunctive relief.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-1. Legislative findings and declaration of public policy.

§30-20-2. Definitions.

- §30-20-3. License required; exception; firms, associations and corporations engaging in the practice of physical therapy; unauthorized practice of physical therapy.
- §30-20-4. West Virginia board of physical therapy continued; members, terms, meetings, officers, oath, compensation and expenses; general provisions.
- §30-20-5. Powers and duties of board; funds of board.
- §30-20-6. Qualifications of applicants for license; application fee.
- §30-20-7. Examination of applicants.
- §30-20-8. Issuance of license; renewal of license; renewal fee; display of license.
- §30-20-9. Temporary permits.
- §30-20-10. Suspension or revocation of license or temporary permit.
- §30-20-11. Procedures for hearing.
- §30-20-12. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §30-20-13. Penalties.
- §30-20-14. Actions to enjoin violations.

§30-20-1. Legislative findings and declaration of public policy.

1 The Legislature of the state of West Virginia hereby
2 determines and finds that in the public interest persons
3 should not engage in the practice of physical therapy
4 or act as physical therapy assistants without the requisite
5 experience and training and without adequate regula-
6 tion and control; and that it is necessary to protect the
7 citizens of this state from the unauthorized, unqualified
8 and unregulated practice of physical therapy. It is there-
9 fore declared to be the public policy of this state that
10 the practice of physical therapy affects the general wel-
11 fare and public interest of the state and its citizens;
12 that persons without the necessary qualifications, train-
13 ing and education and persons not of good character
14 should not engage in the practice of physical therapy
15 or act as physical therapy assistants; and that the evils
16 of such unauthorized and unqualified practice may be
17 best prevented and the interests of the public best
18 served by regulating and controlling such practice as
19 provided in this article.

§30-20-2. Definitions.

- 1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:
- 3 (a) "Applicant" means any person making application

4 for an original or renewal license or a temporary permit
5 under the provisions of this article.

6 (b) "Board" means the West Virginia board of physical
7 therapy.

8 (c) "Licensed physical therapist" means any physical
9 therapist holding a license or temporary permit issued
10 under the provisions of this article or under the former
11 provisions of this article.

12 (d) "Licensed physical therapy assistant" means any
13 physical therapy assistant holding a license or temporary
14 permit issued under the provisions of this article.

15 (e) "Licensee" means any person holding a license
16 or temporary permit issued under the provisions of
17 this article or under the former provisions of this
18 article.

19 (f) "Physical therapy" means the therapeutic treat-
20 ment of any person by the use of massage, mechanical
21 stimulation, heat, cold, light, air, water, electricity, sound
22 and exercise, including mobilization of the joints and
23 training in functional activities, for the purpose of cor-
24 recting or alleviating any physical or mental condition
25 or preventing the development of any physical or mental
26 disability, and the performance of neuro-muscular-skeletal
27 tests and measurements as an aid in diagnosis, evaluation
28 or determination of the existence of and the extent of
29 any body malfunction: *Provided*, That electromyography
30 examination and electrodiagnostic studies other than
31 the determination of chronaxia and strength duration
32 curves shall not be performed except under the super-
33 vision of a physician electromyographer and electro-
34 diagnostician. Physical therapy does not include the use
35 of radiology and radium for diagnostic and therapeutic
36 purposes, or the use of electricity for surgical purposes,
37 including cauterization.

38 (g) "Physical therapist" means a person who engages
39 in the practice of physical therapy.

40 (h) "Physical therapy aide" means a person, other than
41 a physical therapy assistant, who assists a licensed physi-

cal therapist in the practice of physical therapy under the direct supervision of such licensed physical therapist and who also performs activities supportive of but not involving assistance in the practice of physical therapy.

(1) As contained in this section, the term "direct supervision" shall mean the actual physical presence of the physical therapist.

(i) "Physical therapy assistant" means a person who assists in the practice of physical therapy by performing patient-related activities delegated to him by a licensed physical therapist and performed under the direct supervision of such licensed physical therapist and which are commensurate with his education and training, including physical therapy procedures, but not the interpretation of referrals, performance of evaluation procedures or determination and modification of patient programs.

(j) "Practice of physical therapy" means the rendering or offering to render for a fee, salary or other compensation, monetary or otherwise, any service involving physical therapy. However, for the purpose of section three of this article, the term "practice of physical therapy" shall not include:

(1) Teaching physical therapy as part of employment at an institution of higher learning; or

(2) The activities of a student of physical therapy, physical therapy extern or physical therapy intern, which activities are a part of and are engaged in pursuant to a course of study at an institution of higher learning, including, but not limited to, activities conducted at the institution of higher learning and activities conducted outside the institution if under the direct supervision of a licensed physical therapist; or

(3) The activities of a physical therapy aide if all activities of such physical therapy aide involving assistance in the practice of physical therapy are performed under the direct supervision of a licensed physical therapist; or

80 (4) The administration of simple massages and the
81 operation of health clubs so long as not intended to
82 constitute or represent the practice of physical therapy.

§30-20-3. License required; exception; firms, associations and corporations engaging in the practice of physical therapy; unauthorized practice of physical therapy.

1 (a) No person shall engage in, offer to engage in or
2 hold himself out to the public as being engaged in,
3 the practice of physical therapy in this state unless he
4 is a licensed physical therapist: *Provided*, That the fore-
5 going prohibition shall not apply to the activities of a
6 licensed physical therapy assistant performed in accor-
7 dance with the definitional requirements of a physical
8 therapy assistant as specified in subdivision (1), sec-
9 tion two of this article. No person shall use in connec-
10 tion with his name the words "physical therapy techni-
11 cian," "registered physical therapist," "physical therapist,"
12 "licensed physical therapist" or "physiotherapist" or use
13 the initials "R.P.T.," "P.T.T.," "P.T." or any other letters,
14 words or insignia which induces or tends to induce the
15 belief that such person is qualified to engage or is
16 engaged in the practice of physical therapy, unless he
17 is a licensed physical therapist. No person shall use in
18 connection with his name the words "physical therapy
19 assistant," "registered physical therapy assistant" or
20 "licensed physical therapy assistant" or use the initials
21 "P.T.A.," "A.P.T." or any other letters, words or insignia
22 which induces or tends to induce the belief that such
23 person is qualified to act or is acting as a physical
24 therapy assistant, unless he is a licensed physical therapy
25 assistant. No firm, association or corporation shall, ex-
26 cept through a licensee or licensees, render any service
27 or engage in any activity which if rendered or engaged
28 in by any individual would constitute the practice of
29 physical therapy.

30 (b) Notwithstanding the provisions of subsection (a)
31 of this section, any person who practiced physical therapy
32 in this state for five continuous years prior to July
33 one, one thousand nine hundred sixty-three, and who

34 was eligible to qualify for a license under the former
35 provisions of this article by successful completion of
36 a written examination provided by the board and who
37 has not yet successfully completed such examination,
38 may continue to practice physical therapy without a
39 license or temporary permit issued under the provisions
40 of this article, and notwithstanding that such person does
41 not meet the educational requirement specified in sub-
42 division (5), subsection (a), section six of this article,
43 may continue to take such examination: *Provided, how-*
44 *ever,* That unless and until such person passes such
45 examination, such person shall not use in connection
46 with his name the words "physical therapy technician,"
47 "registered physical therapist," "physical therapist,"
48 "licensed physical therapist" or "physiotherapist" or use
49 the initials "R.P.T.," "P.T.T.," "P.T." or any other letters,
50 words or insignia which induces or tends to induce the
51 belief that such person is a licensed physical therapist.

52 (c) No person shall act, nor hold himself out as being
53 able to act, as a physical therapy assistant unless he
54 is a licensed physical therapy assistant.

55 (d) Nothing contained within this article shall pro-
56 hibit any person licensed in this state under any other
57 article of this code from engaging in the practice for
58 which he is licensed.

59 (e) Nothing contained within this article shall be
60 construed as authorizing a physical therapist, or physical
61 therapy assistant, or any other person to practice medi-
62 cine, surgery, osteopathy, homeopathy, chiropractics,
63 naturopathy or any other form, branch or method of
64 healing as authorized by the laws of the state of West
65 Virginia.

66 (f) A licensed physical therapist shall not treat per-
67 sons by physical therapy or otherwise other than upon
68 referral by a licensed physician or surgeon, dentist,
69 osteopathic physician and surgeon or chiropodist-
70 podiatrist. A licensed physical therapy assistant shall not
71 practice physical therapy other than in accordance with
72 the definitional requirements of a physical therapy assis-

73 tant as specified in subdivision (i), section two of this
74 article.

**§30-20-4. West Virginia board of physical therapy continued;
members, terms, meetings, officers, oath, compensa-
tion and expenses; general provisions.**

1 (a) The West Virginia state board of examiners and
2 registration of physical therapists heretofore created shall
3 continue in existence but on and after the effective date
4 of this article shall be known and designated as "the
5 West Virginia board of physical therapy," and shall
6 consist of five members appointed by the governor by
7 and with the advice and consent of the Senate. The
8 three members of the board in office on the effective
9 date of this article shall, unless sooner removed, con-
10 tinue to serve until their terms expire and until their
11 successors have been appointed and have qualified. On
12 or before July one, one thousand nine hundred seventy-
13 six, the governor shall appoint one member to serve
14 until June thirty, one thousand nine hundred seventy-
15 nine, and one member to serve until June thirty, one
16 thousand nine hundred eighty, or until their successors
17 have been appointed and have qualified. As the terms
18 of the three members of the board in office on the ef-
19 fective date of this article expire and as the terms of
20 the two members to be appointed by the governor on
21 or before July one, one thousand nine hundred seventy-
22 six, expire, members shall be appointed for overlapping
23 terms of five years, so that one term expires each year,
24 or until their successors have been appointed and have
25 qualified. Any vacancy shall be filled by appointment
26 by the governor for the unexpired term of the member
27 whose office shall be vacant and any such appointment
28 shall be made within sixty days of the occurrence of
29 such vacancy. The governor may remove any member
30 of the board in case of incompetency, neglect of duty,
31 gross immorality or malfeasance in office.

32 (b) Each member of the board must be licensed under
33 the provisions of this article or under the former pro-
34 visions of this article, have at least three years' experi-

35 ence as a physical therapist and be actively engaged
36 in the practice of physical therapy. Members may be
37 reappointed for any number of terms. Before entering
38 upon the performance of this duty, each member shall
39 take and subscribe to the oath prescribed by section
40 five, article four of the constitution of this state.

41 (c) The board shall elect from its membership a chair-
42 man and secretary who shall serve at the will and
43 pleasure of the board. A majority of the members
44 of the board shall constitute a quorum and meetings
45 shall be held at the call of the chairman or upon the
46 written request of three members at such time and place
47 as designated in such call or request, and, in any event,
48 the board shall meet at least once annually to con-
49 duct the examinations hereinafter provided for and to
50 transact such other business as may come before it.
51 Members may be paid such reasonable compensation
52 as the board may from time to time determine, and in
53 addition may be reimbursed for all reasonable and neces-
54 sary expenses actually incurred in the performance of
55 their duties, which compensation and expenses shall be
56 paid in accordance with the provisions of subsection (b),
57 section five of this article.

§30-20-5. Powers and duties of board; funds of board.

1 (a) The board shall:

2 (1) Examine applicants and determine their eligibility
3 for a license or temporary permit to engage in the prac-
4 tice of physical therapy or to act as a physical therapy
5 assistant, as the case may be;

6 (2) Prepare or approve, conduct and grade or pro-
7 vide for the grading of, an apt and proper written or
8 written and oral examination of applicants for a license
9 to engage in the practice of physical therapy and a
10 separate examination of applicants for a license to act
11 as a physical therapy assistant;

12 (3) Determine the time and place for any such exami-
13 nations and the passing score for each such separate
14 examination;

15 (4) Promulgate reasonable rules and regulations imple-
16 menting the provisions of this article and the powers
17 and duties conferred upon the board hereby, including,
18 but not limited to, (1) reasonable rules and regulations
19 establishing standards to insure that the activities of
20 a licensed physical therapy assistant are performed in
21 accordance with the definitional requirements of a physi-
22 cal therapy assistant as specified in subdivision (i), sec-
23 tion two of this article, which reasonable rules and
24 regulations shall require that there shall be no more than
25 two physical therapy assistants licensed to practice in
26 this state for every physical therapist so licensed and
27 shall require that no more than two physical therapy
28 assistants be performing under the direct supervision of
29 a licensed physical therapist at any one time, and (2)
30 reasonable rules and regulations establishing standards
31 to insure that those activities of a physical therapy aide
32 involving assistance in the practice of physical therapy
33 are performed under the direct supervision of a licensed
34 physical therapist, which reasonable rules and regula-
35 tions shall require that a licensed physical therapist be
36 on the premises at all times while such activities of the
37 physical therapy aide are being performed, all of which
38 reasonable rules and regulations shall be promulgated
39 in accordance with the provisions of article three, chap-
40 ter twenty-nine-a of this code;

41 (5) Issue, renew, deny, suspend or revoke licenses and
42 temporary permits to engage in the practice of physical
43 therapy or licenses and temporary permits to act as
44 physical therapy assistants in accordance with the pro-
45 visions of this article and, in accordance with the ad-
46 ministrative procedures hereinafter provided, may renew,
47 affirm, reverse, vacate or modify its order with respect
48 to any such denial, suspension or revocation;

49 (6) Investigate alleged violations of any provision of
50 this article, any reasonable rule and regulation promul-
51 gated hereunder and any order or final decision of the
52 board and take appropriate disciplinary action against
53 any licensee for the violation thereof or institute appro-
54 priate legal action for the enforcement of any provision

55 of this article, any reasonable rule and regulation promul-
56 gated hereunder and any order or final decision of the
57 board or take such disciplinary action and institute such
58 legal action;

59 (7) Purchase or rent necessary office space, equipment
60 and supplies and employ, direct, discharge and define
61 the duties of an executive secretary and other full-time
62 or part-time professional, clerical or other personnel
63 necessary to effectuate the provisions of this article;

64 (8) Maintain a register listing the name of every
65 licensed physical therapist and licensed physical therapy
66 assistant, his last known place of business or employment
67 and last known residence, and the date and certificate
68 number of his license; prepare annually from such regis-
69 ter a list of every such licensed physical therapist and
70 licensed physical therapy assistant; furnish such list free
71 of charge to the superintendent or administrator of every
72 known hospital in this state and every licensed physician
73 or surgeon, dentist, osteopathic physician and surgeon or
74 chiropracist-podiatrist in this state who requests the same;
75 and furnish such list to any other interested person who
76 makes application therefor and who pays to the board
77 the reasonable cost of the copy of such list;

78 (9) Keep accurate and complete records of its pro-
79 ceedings, certify the same as may be appropriate and
80 submit to the governor a report on the transactions of
81 the board including an accounting of all money received
82 and disbursed;

83 (10) Whenever it deems it appropriate, confer with
84 the attorney general or his assistants in connection with
85 all legal matters and questions, whose responsibility it
86 shall be to render all legal assistance required; and

87 (11) Take such other action as may be reasonably
88 necessary and appropriate to effectuate the provisions
89 of this article.

90 (b) All moneys paid to the board shall be accepted
91 by a person designated by the board and deposited by
92 him with the treasurer of the state and credited to an
93 account to be known as the "West Virginia Board of

94 Physical Therapy." The compensation of and the reim-
95 bursement of all reasonable and necessary expenses
96 actually incurred by the members of the board and all
97 other costs and expenses incurred by the board in the
98 administration of this article shall be paid from such
99 fund, and no part of the state's general revenue fund
100 shall be expended for such purpose.

§30-20-6. Qualifications of applicants for license; application fee.

1 (a) To be eligible for a license to engage in the
2 practice of physical therapy, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Not be addicted to the intemperate use of alcohol
6 or narcotic drugs or other controlled substances;

7 (4) Not have been convicted of a felony in any state
8 or federal court in this or any other state within ten
9 years preceding the date of application for license, which
10 conviction remains unreversed; and not have been con-
11 victed of a felony in any state or federal court in this
12 or any other state at any time if the offense for which
13 he was convicted related to the practice of physical
14 therapy, which conviction remains unreversed;

15 (5) Present evidence that he is a graduate of a school
16 of physical therapy approved by the American physical
17 therapy association and the board; *Provided*, That any
18 person who received his education in physical therapy
19 outside of the United States may qualify for a license
20 by fulfilling the requirements specified by the American
21 physical therapy association and the board, including
22 successful completion of a period of supervised clinical
23 experience; and

24 (6) Either have passed the examination prescribed by
25 the board for a license to engage in the practice of
26 physical therapy, or be entitled to be licensed with-
27 out examination as provided in subsection (d) of this
28 section.

29 (b) To be eligible for a license to act as a physical
30 therapy assistant, the applicant must:

31 (1) Satisfy the requirements of subdivisions (1) through
32 (4), subsection (a) of this section;

33 (2) Present evidence that he is a graduate of a two-
34 year college level education program for physical therapy
35 assistants which meets the standards established by the
36 American physical therapy association and the board;
37 and

38 (3) Either have passed the examination prescribed by
39 the board for a license to act as a physical therapy assis-
40 tant, or be entitled to be licensed without examination
41 as provided in subsection (d) of this section.

42 (c) Although an applicant does not meet the educa-
43 tional requirement specified in subdivision (2), subsec-
44 tion (b) of this section, the board may, nevertheless,
45 issue a license to act as a physical therapy assistant
46 to such applicant if such applicant (i) presents evidence
47 that he has a high school diploma or its equivalent; (ii)
48 meets the requirements of subdivision (1), subsection (b)
49 of this section; (iii) presents sufficient and satisfactory
50 written evidence to the board on or before July one,
51 one thousand nine hundred seventy-nine, that such appli-
52 cant has been employed as a physical therapy aide under
53 the supervision of a licensed physical therapist in this
54 state on a full-time basis for a continuous period of at
55 least two years, or for cumulative periods of time either
56 full-time or part-time which equal two years full-time
57 employment, between January one, one thousand nine
58 hundred seventy-one, and July one, one thousand nine
59 hundred seventy-nine; and (iv) successfully passes the
60 examination required for a license to act as a physical
61 therapy assistant: *Provided, however,* That such appli-
62 cant shall be afforded only two opportunities to pass
63 such examination.

64 (d) The board may issue a license to practice physical
65 therapy or a license to act as a physical therapy assistant,
66 without examination, to any applicant who holds a valid
67 license or is registered to engage in the practice of

68 physical therapy or to act as a physical therapy assistant,
69 as the case may be, issued to him under the laws of
70 another state or territory or possession of the United
71 States: *Provided further*, That the applicant's qualifica-
72 tions are in the opinion of the board equal to or greater
73 than the requirements of this article and the rules and
74 regulations promulgated by the board.

75 (e) Any applicant for a license under the provisions
76 of subsection (a), (b), (c) or (d) of this section shall
77 submit an application therefor at such time, in such
78 manner, on such forms and containing such information
79 as the board shall from time to time by reasonable rule
80 and regulation prescribe and pay to the board a nonre-
81 fundable application fee of sixty dollars in the case of
82 an application for a license to engage in the practice of
83 physical therapy and thirty dollars in the case of an
84 application for a license to act as a physical therapy
85 assistant.

§30-20-7. Examination of applicants.

1 The board shall give the prescribed examination to ap-
2 plicants for a license to engage in the practice of physical
3 therapy and the prescribed examination to applicants for
4 a license to act as a physical therapy assistant, who meet
5 the appropriate other requirements of section six of this
6 article. The examination for a license to engage in the
7 practice of physical therapy shall include a written exam-
8 ination which shall test the applicant's advanced knowl-
9 edge of anatomical, biological and physical sciences, physi-
10 cal therapy procedures and theory and such other subjects
11 as the board may deem appropriate to test the applicant's
12 fitness to engage in the practice of physical therapy. The
13 examination for a license to act as a physical therapy
14 assistant shall include a written examination which shall
15 test the applicant's knowledge of anatomical, biological
16 and physical science, physical therapy procedures and
17 theory: *Provided*, That the examination given to appli-
18 cants for a license to act as a physical therapy assistant
19 under subsection (c), section six of this article, shall be
20 prepared and graded by the board and shall test only the

21 applicant's knowledge of physical therapy procedures and
22 theory. All examinations shall be held within this state, at
23 least once each year, at such time and place as the board
24 shall determine. Except as provided in subsection (c), sec-
25 tion six of this article, there shall be no limit to the num-
26 ber of times that an applicant may make application for
27 and take the required examination for a license to engage
28 in the practice of physical therapy or the required exami-
29 nation to act as a physical therapy assistant: *Provided,*
30 *however,* That for each such application, the applicant
31 shall pay the appropriate application fee prescribed in
32 subsection (e), section six of this article.

§30-20-8. Issuance of license; renewal of license; renewal fee; display of license.

1 (a) Whenever the board finds that an applicant meets
2 all of the requirements of this article for a license to en-
3 gage in the practice of physical therapy or to act as a
4 physical therapy assistant, as the case may be, it shall
5 forthwith issue to him such license; and otherwise the
6 board shall deny the same.

7 (b) Every licensee shall renew his license on or before
8 January one of each year by payment of a fee of twenty
9 dollars in the case of a license to engage in the practice
10 of physical therapy and ten dollars in the case of a license
11 to act as a physical therapy assistant. Any license which
12 is not so renewed shall automatically lapse. A license
13 which has lapsed may be renewed within five years of its
14 expiration date by payment to the board of the appropri-
15 ate renewal fee for each year or part thereof during which
16 the license was not renewed. After the expiration of such
17 five-year period, a license may be renewed only by com-
18 plying with the provisions herein relating to the issuance
19 of an original license.

20 (c) A licensee desiring to cease engaging in the practice
21 of physical therapy temporarily or to cease acting tempo-
22 rarily as a physical therapy assistant shall send a written
23 notice to the board. Upon receipt of such notice, the board
24 shall place the name of such person upon the inactive list.

25 While his name remains on this list, such person shall not
26 be subject to the payment of any fee and shall not engage
27 in the practice of physical therapy or act as a physical ther-
28 apy assistant, as the case may be, in this state. When such
29 person again desires to engage in the practice of physical
30 therapy or to act as a physical therapy assistant, applica-
31 tion for renewal of the license and the payment of a re-
32 newal fee for the then current year shall be made to the
33 board.

34 (d) The board may deny any application for renewal
35 of a license for any reason which would justify the denial
36 of an original application for a license.

37 (e) The board shall prescribe the form of licenses and
38 each license shall be conspicuously displayed by the
39 licensee at his principal place of practice, or, in the case of
40 a license to act as a physical therapy assistant, at his place
41 of employment.

42 (f) Any license issued under the former provisions of
43 this article, which license remains unsuspended and un-
44 revoked, shall be valid and considered for all purposes as
45 having been issued under the provisions of this article and
46 may be renewed, suspended or revoked as licenses issued
47 under the provisions of this article, and any license issued
48 under the former provisions of this article which has
49 lapsed or shall hereafter lapse shall be subject to the pro-
50 visions of subsection (b) of this section pertaining to the
51 lapse of a license issued under the provisions of this article
52 and the renewal thereof.

§30-20-9. Temporary permits.

1 (a) Upon proper application and the payment of a
2 nonrefundable fee of twenty dollars, the board may issue,
3 without examination, a temporary permit to engage in
4 the practice of physical therapy in this state:

5 (1) Pending examination, to any applicant who meets
6 the requirements of subdivisions (1) through (5), sub-
7 section (a), section six of this article, which temporary
8 permit shall expire thirty days after the board gives
9 written notice of the results of the examination held

10 next following the issuance of such temporary permit,
11 but upon such expiration, one additional temporary
12 permit may be obtained by such applicant, upon proper
13 application therefor and the payment of a nonrefundable
14 fee of twenty dollars; and

15 (2) To an applicant who is not a resident of this state
16 and who meets the requirements of subdivisions (1)
17 through (5), subsection (a), section six of this article,
18 which temporary permit shall be valid only for a period
19 of ninety days in the calendar year in which issued and
20 such permit may not be renewed nor another thereof
21 issued to the same person in the same calendar year.

22 (b) Upon proper application and the payment of a
23 nonrefundable fee of ten dollars, the board may issue,
24 without examination, a temporary permit to act as a
25 physical therapy assistant in this state:

26 (1) Pending examination, to an applicant who meets
27 the requirements of subdivisions (1) and (2), subsection
28 (b), section six of this article, which temporary permit
29 shall expire thirty days after the board gives written
30 notice of the results of the examination held next follow-
31 ing the issuance of such temporary permit, but upon
32 such expiration, one additional temporary permit may
33 be obtained by such applicant, upon proper application
34 therefor and the payment of a nonrefundable fee of ten
35 dollars; and

36 (2) To an applicant who is not a resident of this state
37 and who meets the requirements of subdivisions (1) and
38 (2), subsection (b), section six of this article, which
39 temporary permit shall be valid only for a period of
40 ninety days in the calendar year in which issued and
41 such permit may not be renewed nor another thereof
42 issued to the same person in the same calendar year.

§30-20-10. Suspension or revocation of license or temporary permit.

1 (a) The board may at any time upon its own motion,
2 and shall upon the written complaint of any person,
3 conduct an investigation to determine whether there

4 are any grounds for the suspension or revocation of a
5 license or temporary permit issued under the provisions
6 of this article.

7 (b) The board shall suspend or revoke any license or
8 temporary permit when it finds the holder thereof has:

9 (1) Used narcotic drugs, other controlled substances
10 or alcohol to the extent that it affects his professional
11 competency; or

12 (2) Been convicted of violating any state or federal
13 law relating to controlled substances, which conviction
14 remains unreversed; or

15 (3) Been, in the judgment of the board, guilty of
16 immoral or unprofessional conduct; or

17 (4) Been convicted of a felony or a crime involving
18 moral turpitude; or

19 (5) Been declared mentally incompetent by a court
20 of competent jurisdiction; or

21 (6) Obtained or attempted to obtain a license issued
22 under the provisions of this article by fraud or willful
23 misrepresentation; or

24 (7) Been grossly negligent in the practice of physical
25 therapy or in acting as a physical therapy assistant, as
26 the case may be; or

27 (8) Treated or undertaken to treat a human being
28 otherwise than by physical therapy and as authorized
29 by this article; or

30 (9) Failed or refused to comply with the provisions
31 of this article or any reasonable rule and regulation
32 promulgated by the board hereunder or any order or
33 final decision of the board; or

34 (10) In the case of a physical therapist, practiced
35 physical therapy other than upon the referral by a
36 licensed physician or surgeon, dentist, osteopathic physi-
37 cian and surgeon or chiropodist-podiatrist; or employed
38 a physical therapy assistant who is not a licensed physi-
39 cal therapy assistant; or employed or utilized a licensed

40 physical therapy assistant or physical therapy aide with-
41 out complying with the provisions of this article or the
42 rules and regulations of the board; or

43 (11) In the case of a physical therapy assistant, prac-
44 ticed physical therapy other than in accordance with the
45 definitional requirements of a physical therapy assistant
46 as specified in subdivision (i), section two of this article.

47 (c) The board shall also suspend or revoke any license
48 or temporary permit if it finds the existence of any
49 grounds which would justify the denial of an application
50 for a license or temporary permit if application were
51 then being made for it.

§30-20-11. Procedures for hearing.

1 (a) Whenever the board shall deny an application for
2 any original or renewal license or any application for a
3 temporary permit or shall suspend or revoke any license
4 or temporary permit it shall make and enter an order to
5 that effect and serve a copy thereof on the applicant or
6 licensee, as the case may be, by certified mail, return re-
7 ceipt requested. Such order shall state the grounds for
8 the action taken and shall require that any license or
9 temporary permit suspended or revoked thereby shall
10 be returned to the board by the holder within twenty
11 days after receipt of said copy of said order.

12 (b) Any person adversely affected by any such order
13 shall be entitled to a hearing thereon (as to all issues not
14 excluded from the definition of a "contested case" as set
15 forth in article one, chapter twenty-nine-a of this code)
16 if, within twenty days after receipt of a copy thereof, he
17 files with the board a written demand for such hearing. A
18 demand for hearing shall operate automatically to stay or
19 suspend the execution of any order suspending or re-
20 voking a license or temporary permit or denying an appli-
21 cation for a renewal license or denying a temporary
22 permit to act as a physical therapy assistant. The board
23 may require the person demanding such hearing to give
24 reasonable security for the costs thereof, and, if such per-
25 son does not substantially prevail at such hearing, such

26 costs shall be assessed against him and may be collected
27 by a civil action or other proper remedy.

28 (c) Upon receipt of a written demand for such hearing,
29 the board shall set a time and place therefor not less than
30 ten nor more than thirty days thereafter. Any scheduled
31 hearing may be continued by the board upon its own mo-
32 tion or for good cause shown by the person demanding the
33 hearing.

34 (d) All of the pertinent provisions of article five, chap-
35 ter twenty-nine-a of this code shall apply to and govern the
36 hearing and the administrative procedures in connection
37 with and following such hearing, with like effect as if the
38 provisions of said article five were set forth in this sub-
39 section.

40 (e) Any such hearing shall be conducted by a quorum
41 of the board. For the purpose of conducting any such
42 hearing any member of the board shall have the power
43 and authority to issue subpoenas and subpoenas duces
44 tecum which shall be issued and served within the time
45 and for the fees and shall be enforced, as specified in sec-
46 tion one, article five of said chapter twenty-nine-a, and all
47 of the said section one provisions dealing with subpoenas
48 and subpoenas duces tecum shall apply to subpoenas and
49 subpoenas duces tecum issued for the purpose of a hear-
50 ing hereunder.

51 (f) At any such hearing the person who demanded the
52 same may represent himself or be represented by an at-
53 torney-at-law admitted to practice before any circuit
54 court of this state. Upon request by the board, it shall be
55 represented at any such hearing by the attorney general
56 or his assistants without additional compensation.

57 (g) After any such hearing and consideration of all of
58 the testimony, evidence and record in the case, the board
59 shall render its decision in writing. The written decision
60 of the board shall be accompanied by findings of fact and
61 conclusions of law as specified in section three, article five,
62 chapter twenty-nine-a of this code, and a copy of such
63 decision and accompanying findings and conclusions shall

64 be served by certified mail, return receipt requested, upon
65 the person demanding such hearing, and his attorney of
66 record, if any.

67 (h) The decision of the board shall be final unless re-
68 versed, vacated or modified upon judicial review thereof
69 in accordance with the provisions of section twelve of this
70 article.

**§30-20-12. Judicial review; appeal to supreme court of appeals;
legal representation for board.**

1 Any person adversely affected by a decision of the board
2 rendered after a hearing held in accordance with the pro-
3 visions of section eleven of this article shall be entitled to
4 judicial review thereof. All of the pertinent provisions of
5 section four, article five, chapter twenty-nine-a of this
6 code shall apply to and govern such judicial review with
7 like effect as if the provisions of said section four were set
8 forth in this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of sec-
12 tion one, article six, chapter twenty-nine-a of this code.

13 Legal counsel and services for the board in all appeal
14 proceedings in any circuit court and the supreme court of
15 appeals shall be provided by the attorney general or his
16 assistants and in any circuit court by the prosecuting
17 attorney of the county as well, all without additional
18 compensation.

§30-20-13. Penalties.

1 Any person who violates any provision of this article,
2 any reasonable rule and regulation promulgated here-
3 under or any order or any final decision of the board shall
4 be guilty of a misdemeanor, and, upon conviction thereof,
5 shall be fined not more than five hundred dollars, or im-
6 prisoned in the county jail not more than six months, or
7 both fined and imprisoned.

§30-20-14. Actions to enjoin violations.

1 Whenever it appears to the board that any person has

2 been or is violating or is about to violate any provision
3 of this article, any reasonable rule and regulation pro-
4 mulgated hereunder or any order or final decision of
5 the board, the board may apply in the name of the
6 state to the circuit court of the county in which the
7 violation or violations or any part thereof has occurred,
8 is occurring or is about to occur, or the judge thereof
9 in vacation, for an injunction against such person and
10 any other persons who have been, are or are about to
11 be, involved in any practices, acts or omissions, so in
12 violation, enjoining such person or persons from any
13 such violation or violations. Such application may be
14 made and prosecuted to conclusion whether or not any
15 such violation or violations have resulted or shall result
16 in prosecution or conviction under the provisions of
17 section thirteen of this article.

18 Upon application by the board, the circuit courts of
19 this state may by mandatory or prohibitory injunction
20 compel compliance with the provisions of this article,
21 the reasonable rules and regulations promulgated here-
22 under and all orders and final decisions of the board. The
23 court may issue a temporary injunction in any case
24 pending a decision on the merits of any application filed.

25 The judgment of the circuit court upon any application
26 permitted by the provisions of this section shall be final
27 unless reversed, vacated or modified on appeal to the
28 supreme court of appeals. Any such appeal shall be
29 sought in the manner and within the time provided by
30 law for appeals from circuit courts in other civil actions.

31 The board shall be represented in all such proceedings
32 by the attorney general or his assistants and in such
33 proceedings in the circuit court by the prosecuting at-
34 torneys of the several counties as well, all without
35 additional compensation.

CHAPTER 106

(H. B. 942—By Mrs. Withrow and Mr. Dinsmore)

[Passed March 17, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing experience requirements for eligibility for licenses to engage in practice of psychology.

Be it enacted by the Legislature of West Virginia:

That section seven, article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PSYCHOLOGISTS.

§30-21-7. Qualifications of applicants; exceptions; applications; fee.

1 (a) To be eligible for a license to engage in the practice of
2 psychology, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Be a holder of a doctor of philosophy degree or its equiv-
6 alent or a master's degree in psychology from an accredited in-
7 stitution of higher learning, with adequate course study at
8 such institution in psychology, the adequacy of any such course
9 study to be determined by the board;

10 (4) When the degree held is a doctor of philosophy degree
11 or its equivalent, have at least one year's experience subse-
12 quent to receiving said degree in the performance of any of
13 the psychological services described in subdivision (e), sec-
14 tion two of this article, including those activities excluded from
15 the definition of the term "practice of psychology" in said
16 subdivision (c), and, when the degree held is a master's degree,
17 have at least five years' experience subsequent to receiving
18 said degree in the performance of any of the psychological

19 services described in said subdivision (e), including those ac-
20 tivities excluded from the definition of the term "practice of
21 psychology" in said subdivision (e);

22 (5) Have passed the examination prescribed by the board,
23 which examination shall cover the basic subject matter of
24 psychology and psychological skills and techniques;

25 (6) Not have been convicted of a felony or crime involv-
26 ing moral turpitude; and

27 (7) Not, within the next preceding six months, have taken
28 and failed to pass the examination required by subdivision (5),
29 subsection (a) of this section.

30 (b) The following persons shall be eligible for a license to
31 engage in the practice of psychology without examination:

32 (1) Any applicant who holds a doctor of philosophy de-
33 gree or its equivalent from an institution of higher learning,
34 with adequate course study at such institution in psychology
35 and who is a diplomate of the "American Board of Examiners
36 in Professional Psychology"; and

37 (2) Any person who holds a license or certificate to engage
38 in the practice of psychology issued by any other state, the
39 requirements for which license or certificate are found by the
40 board to be at least as great as those provided in this article.

41 (c) Any person who is engaged in the practice of psychology
42 in this state, or is engaged in any of the activities described in
43 subdivision (e), (1), (2) or (3), section two of this article, in
44 this state, on the effective date of this article and has been
45 so engaged for a period of two consecutive years immediately
46 prior thereto shall be eligible for a license to engage in the
47 practice of psychology without examination and without meet-
48 ing the requirements of subdivision (4), subsection (a) of this
49 section, if application for such license is made within six
50 months after the effective date of this article and if such
51 person meets the requirements of subdivisions (1), (2), (3) and
52 (6), subsection (a) of this section: *Provided*, That an equiva-
53 lent of a master's degree in psychology may be considered by
54 the board, only for the purpose of this subsection (c), as
55 meeting the requirements of subdivision (3), subsection (a)
56 of this section.

57 (d) Any applicant for any such license shall submit an ap-
58 plication therefor at such time (subject to the time limitation
59 set forth in subsection (c) of this section), in such manner, on
60 such forms and containing such information as the board may
61 from time to time by reasonable rule and regulation prescribe,
62 and pay to the board an application fee of fifty dollars, not
63 refundable.

CHAPTER 107

(S. B. 430—By Mr. Brotherton, Mr. President, and Mr. Gilligan)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public insurance board; requiring the board to provide for optional group life and accidental death insurance in amounts not to exceed twenty thousand dollars for each eligible employee.

Be it enacted by the Legislature of West Virginia:

That section seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide; separate rating for claims experience purposes.

1 The board is hereby empowered and authorized to
2 establish a group hospital and surgical insurance plan
3 or plans, a group major medical insurance plan or plans,
4 and a group life and accidental death insurance plan or

5 plans for those employees herein made eligible, and to
6 establish and promulgate rules and regulations for the
7 administration of such plans, subject to the limitations
8 contained in this article. Such plans may provide for
9 group hospital and surgical and group major medical
10 insurance against the financial cost of hospitalization,
11 surgical and medical treatment and care, and may also
12 include, among other things, prescribed drugs, medi-
13 cines, prosthetic appliances, hospital inpatient and out-
14 patient service benefits, and medical expenses and in-
15 demnifying benefits, and group life and accidental death
16 insurance, and such other coverage and benefits deemed
17 appropriate and desirable by the board.

18 The board shall make available to each employee herein
19 made eligible, at full cost to the employee, the oppor-
20 tunity to purchase optional group life and accidental
21 death insurance in an amount not to exceed twenty thou-
22 sand dollars for life insurance and twenty thousand
23 dollars for accidental death insurance as established
24 under the rules and regulations of the board.

25 The board may cause to be separately rated for claims
26 experience purposes (1) all employees of the state of
27 West Virginia, (2) all teaching and professional em-
28 ployees of the West Virginia board of regents and county
29 boards of education, (3) all nonteaching employees of
30 the West Virginia board of regents and county boards
31 of education or (4) any other categorization which would
32 insure the stability of the overall program.

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CHAPTER 108

(S. B. 469—By Mr. Brotherton, Mr. President, and Mr. Rogerson)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing public employees to continue their coverage under the

public employees insurance act by paying their proportionate share of premium costs during medical leave of absence not exceeding one year.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-18. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage.

1 The board shall promulgate such rules and regulations
2 as may be required for the effective administration of the
3 provisions of this article. All rules and regulations of
4 the board and all hearings held by the board shall be
5 promulgated and held in accordance with the provisions
6 of chapter twenty-nine-a of the code.

7 Such regulations shall provide that any employee of the
8 state who has been compelled or required by law to retire
9 before reaching the age of sixty-five years shall be
10 eligible for coverage at their own expense for the total
11 cost of coverage, as provided under this article, and the
12 dependents of any deceased member shall be entitled to
13 continue their participation and coverage upon payment
14 of the total cost for such coverage. Any employee who
15 voluntarily retires, as provided by law, shall be eligible
16 to participate in the public employees health insurance
17 program at his own expense for the total cost of such
18 coverage.

19 Any employee who is on a medical leave of absence,
20 approved by his employer, shall, subject to the following
21 provisions of this paragraph, be entitled to continue his
22 coverage until he returns to his employment, and such
23 employee and employer shall continue to pay their pro-
24 portionate share of premium costs as provided by this

25 article: *Provided*, That the employer shall be obligated
26 to pay its proportionate share of the premium cost
27 only for a period of one year: *Provided, however*, That
28 during the period of such leave of absence, the employee
29 shall, at least once each month, submit to the employer
30 the statement of a qualified physician certifying that
31 the employee is unable to return to work.

CHAPTER 109

(Com. Sub. for H. B. 1228—By Mr. Altmeyer and Mr. Kopp)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to membership in the West Virginia public employees retirement system and permitting retired members of the department of public safety retirement system and retired members of any municipal policemen or firemen retirement system to participate therein; limitations.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-17. Retirement system membership.

1 The membership of the retirement system shall consist of the
2 following persons:

3 (a) All employees, as defined in section two of this article,
4 who are in the employ of a political subdivision the day pre-
5 ceding the date it becomes a participating public employer and
6 who continue in the employ of the said participating public em-
7 ployer on and after the said date shall become members of the
8 retirement system; and all persons who become employees of a

9 participating public employer on or after the said date shall
10 thereupon become members of the system; except as pro-
11 vided in subdivisions (b) and (c) of this section.

12 (b) The membership of the retirement system shall not
13 include any person who is a member of, or who has been re-
14 tired by, the state teachers' retirement system, the judges' re-
15 tirement system, the retirement system of the department of
16 public safety, or any municipal retirement system for either, or
17 both, policemen or firemen; and the West Virginia department
18 of employment security, by the commissioner of such depart-
19 ment, may elect whether its employees will accept coverage
20 under this article or be covered under the authorization of a
21 separate enactment: *Provided*, That such exclusions of mem-
22 bership shall not apply to any member of the state Legislature,
23 the clerk of the House of Delegates, the clerk of the state
24 Senate or to any member of the legislative body of any
25 political subdivision provided he once becomes a contributing
26 member of the retirement system: *Provided, however*, That
27 any retired member of the retirement system of the department
28 of public safety, and any retired member of any municipal re-
29 tirement system for either, or both, policemen or firemen may
30 on and after the effective date of this section become a mem-
31 ber of the retirement system as provided in this article, without
32 receiving credit for prior service as a municipal policeman or
33 fireman or as a member of the department of public safety.

34 (c) Any member of the state Legislature, the clerk of the
35 House of Delegates, the clerk of the state Senate or any mem-
36 ber of the legislative body of any other political subdivision
37 shall become a member of the retirement system provided
38 he notifies the retirement system in writing of his intention to
39 be a member of the system and files a membership enrollment
40 form as the board of trustees shall prescribe, and each person,
41 upon filing his written notice to participate in the retirement
42 system, shall by said act authorize the clerk of the House of
43 Delegates or the clerk of the state Senate or such person as
44 the legislative body of any other political subdivision shall
45 designate to deduct such member's contribution, as provided in
46 subsection (b), section twenty-nine of this article, and after
47 said deductions have been made from said member's compen-

48 sation, such deductions shall be forwarded to the retirement
49 system.

50 (d) Should any question arise regarding the membership
51 status of any employee, the board of trustees has the final
52 power to decide the question.

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CHAPTER 110

(S. B. 82—By Mr. Brotherton, Mr. President)

[Passed February 17, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees retirement; reemployment after retirement; allowing temporary employment by a participating employer up to twenty-seven hundred sixty dollars per year.

Be it enacted by the Legislature of West Virginia:

That section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement.

1 In the event a retirant becomes employed by a partici-
2 pating public employer, payment of his annuity shall
3 be suspended during the period of his reemployment and
4 he shall become a contributing member to the retirement
5 system. If his reemployment is for a period of one year or
6 longer, his annuity shall be recalculated and he shall be
7 granted an increased annuity due to such additional em-
8 ployment, said annuity to be computed according to sec-
9 tion twenty-two of this article. A retirant may accept
10 temporary employment from a participating employer so

11 long as he shall not receive compensation in excess of
12 twenty-seven hundred sixty dollars per year and continue
13 to draw his annuity.

CHAPTER 111

(S. B. 400—Originating in the Senate Committee on the Judiciary)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to benefits under the public employees retirement act, the municipal employees retirement plan, the policemen's and firemen's pension and relief funds, the death, disability and retirement fund of the department of public safety, the state teachers retirement system, certain supplemental and additional retirement plans, the judges' retirement system and any other retirement plan supported in whole or in part by public funds, by providing that officers and employees convicted of certain crimes, or determined to have committed conduct constituting all of the elements of such crimes, shall, together with their beneficiaries, be ineligible for benefits from such plans; providing findings and declarations; definitions; providing for notice of intention to terminate benefits, waiver and failure to reply; providing for jurisdiction of the circuit court for determination of eligibility; providing for appeal; providing for termination of benefits; providing for refund of contributions; providing for eligibility for new participation upon rehabilitation; providing for setoff; relating to rules of construction; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding

thereto a new article, designated article ten-a, to read as follows:

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

- §5-10A-1. Findings and declarations.
- §5-10A-2. Definitions.
- §5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.
- §5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.
- §5-10A-5. Termination of benefits.
- §5-10A-6. Refund of contributions.
- §5-10A-7. Eligibility for new participation upon rehabilitation.
- §5-10A-8. Setoff; unpaid benefits subject to execution, etc.
- §5-10A-9. Rules of construction.
- §5-10A-10. Severability.

§5-10A-1. Findings and declarations.

1 The Legislature finds and declares that every retire-
2 ment plan instituted and created under the laws of
3 this state has from the inception thereof contemplated
4 and each now contemplates that the service rendered
5 by any participating public officer or employee shall at
6 all times be honorable. The Legislature further finds
7 and declares that honorable service is a condition to
8 receiving any pension, annuity, disability payment or
9 any other benefit under a retirement plan.

§5-10A-2. Definitions.

1 As used in this article:

2 (a) "Retirement plan" or "plan" means the public em-
3 ployees retirement act, pursuant to article ten, chapter
4 five of this code; each municipal employees retirement
5 plan, pursuant to article twenty-two, chapter eight of this
6 code; each policemen's and firemen's pension and relief
7 fund, pursuant to article twenty-two, chapter eight of this
8 code; the death, disability and retirement fund of the de-
9 partment of public safety, pursuant to article two, chapter
10 fifteen of this code; the state teachers retirement system,
11 pursuant to article seven-a, chapter eighteen of this code;
12 supplemental and additional retirement plans, pursuant
13 to section four-a, article twenty-three, chapter eighteen of
14 this code; the judges' retirement system, pursuant to

15 article nine, chapter fifty-one of this code; and any other
16 plan established pursuant to this code for the payment
17 of pension, annuity, disability or other benefits to
18 any person by reason of his service as an officer
19 or employee of this state or of any political subdivision,
20 agency or instrumentality thereof, whenever such
21 plan is supported in whole or in part by public
22 funds.

23 (b) "Beneficiary" means any person eligible for or
24 receiving benefits on account of the service for a public
25 employer by a participant in a retirement plan.

26 (c) "Benefits" means pension, annuity, disability or
27 any other benefits granted pursuant to a retirement
28 plan.

29 (d) "Conviction" means a conviction on or after the
30 effective date of this article in any federal or state
31 court of record whether following a plea of guilty, not
32 guilty or nolo contendere, and whether or not the per-
33 son convicted was serving as an officer or employee
34 of a public employer at the time of the convic-
35 tion.

36 (e) "Less than honorable service" means:

37 (1) Impeachment and conviction of a participant
38 under the provisions of section nine, article four of
39 the constitution of West Virginia, except for a misde-
40 meanor; or

41 (2) Conviction of a participant of a felony for con-
42 duct related to his office or employment which he com-
43 mitted while holding such office or during such employ-
44 ment; or

45 (3) Conduct of a participant which constitutes all of
46 the elements of a crime described in either of the fore-
47 going subdivisions (1) or (2) but for which the partici-
48 pant was not convicted because:

49 (i) Having been indicted for such crime, he made a
50 plea bargaining agreement pursuant to which he pleaded
51 guilty to or nolo contendere to a lesser crime; or

52 (ii) Having been indicted for such crime, he was
53 granted immunity from prosecution for the same; or

54 (iii) Having been named as an unindicted cocon-
55 spirator in an indictment of another person for such a
56 crime, which indictment resulted in the conviction of
57 such other person, he was not prosecuted for such crime
58 or conspiracy therefor.

59 (f) "Participant" means any person eligible for or
60 receiving any benefit under a retirement plan on ac-
61 count of his service as an officer or employee for a public
62 employer.

63 (g) "Public employer" means the state of West Vir-
64 ginia and any political subdivision, agency, or instru-
65 mentality thereof for which there is established a retire-
66 ment plan.

67 (h) "Supervisory board" or "board" means the board
68 of trustees of the West Virginia public employees re-
69 tirement system; the board of trustees of any municipal
70 retirement fund; the board of trustees of any police-
71 men's or firemen's retirement plan; the retirement board
72 of the department of public safety; the state trea-
73 surer, state auditor and one other member of the
74 board of public works so designated by the governor
75 to sit on the supervisory board of the judges' retire-
76 ment plan (who shall for the purpose of this article con-
77 stitute the board); the designated members of the state
78 teachers retirement system established pursuant to
79 section five, article seven-a, chapter eighteen of this
80 code; the governing board of any supplemental retire-
81 ment plan instituted pursuant to authority granted by
82 section four-a, article twenty-three, chapter eighteen of
83 this code, and any other board, commission or public
84 body having the duty to supervise and operate any re-
85 tirement plan.

**§5-10A-3. Notice of intention to terminate benefits; waiver;
failure to reply.**

1 Whenever a supervisory board, upon receipt of a veri-
2 fied complaint or otherwise, has reasonable cause to be-

3 lieve that a participant rendered less than honorable
4 service as defined in section two of this article, it shall
5 notify the affected participant or beneficiary that it be-
6 lieves that the participant rendered less than honorable
7 service and that the participant or beneficiary is thereby
8 ineligible to receive benefits. No supervisory board shall
9 issue such notice:

10 (1) If more than one year has elapsed since the judg-
11 ment of conviction upon which such notice is based be-
12 came final; or

13 (2) In the cases described in paragraph (3), sub-
14 division (e), section two of this article, if more than
15 one year has elapsed since, as the case may be: the plea
16 bargaining agreement, the grant of immunity, or, in the
17 event the participant was named as an unindicted co-
18 conspirator for a crime, the conviction of another person
19 for such crime; or

20 (3) With respect to conduct which occurred prior to
21 the effective date of this article.

22 The notice shall contain a concise statement of the
23 reasons why the board believes that the participant
24 rendered less than honorable service and shall be made
25 either by personal service or by certified mail, return
26 receipt requested, to the address which the participant
27 or beneficiary maintains for purposes of corresponding
28 with the board. If notice is made by certified mail, ser-
29 vice shall be deemed complete upon mailing and a com-
30 pleted receipt shall constitute proof of the receipt thereof.
31 The notice shall inform the participant or beneficiary
32 that he has the right to demand that the board seek a
33 determination in circuit court of his eligibility for bene-
34 fits and membership in the retirement plan by notifying
35 the board of such demand within forty days. The notice
36 shall also inform the participant or beneficiary that the
37 board will terminate the benefits in accordance with sec-
38 tion four of this article and refund the participant's
39 contributions with interest less benefits previously paid
40 as provided in section six thereof if the participant or
41 beneficiary either waives the right to demand that the

42 board take the matter before the circuit court or fails to
43 respond to the board's notice within forty days after
44 service.

§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.

1 If a participant or beneficiary informs the supervisory
2 board within forty days after service of the notice provided for in section three of this article that he demands
3 that the board seek a determination in circuit court, the
4 board shall forthwith file a petition in the circuit court
5 in the county in which the board is located or in which
6 the participant or beneficiary resides, seeking that the
7 court determine that the participant rendered less than
8 honorable service as defined in section two of this article
9 and that the affected participant or beneficiary is thereby
10 ineligible to receive benefits.
11

12 Jurisdiction is hereby conferred on circuit courts to
13 make such determinations.

14 Upon the filing of such a petition by a supervisory
15 board, the circuit court shall give such notice and opportunity to be heard to the affected parties as are consistent
16 with the demands of due process and necessary for a
17 fair determination of the matter. Upon completion of
18 its hearings the court shall make such findings of fact
19 and conclusions of law as are appropriate. Except in the
20 case of exigent circumstances, the court shall make its
21 determination within sixty days of the filing of the petition by the board.
22
23

24 A determination of the circuit court shall be a final
25 order which may be appealed to the supreme court of
26 appeals in the same manner as decisions in other civil
27 actions.

§5-10A-5. Termination of benefits.

1 (a) The board shall terminate a participant's or beneficiary's membership in the plan and shall not thereafter
2 pay any benefits to the participant or his beneficiaries
3 if an affected participant or beneficiary either waives the
4 right to demand that the board seek a determination of
5

6 eligibility in circuit court as set forth in section three of
7 this article or fails to respond to the notice within forty
8 days after service thereof as set forth in said section
9 three, or if a circuit court has determined that the par-
10 ticipant rendered less than honorable service in accor-
11 dance with section four of this article.

12 (b) In the event that the participant is deceased and
13 there are two or more beneficiaries at least one of whom
14 has given the board timely notice that he wishes to
15 exercise his right to demand that the board seek a de-
16 termination of eligibility in circuit court, the board shall
17 take the action provided for by this section with respect
18 to all the beneficiaries only upon a determination by the
19 court that the participant has rendered less than honor-
20 able service.

§5-10A-6. Refund of contributions.

1 The supervisory board shall refund to a participant or
2 beneficiary terminated from benefits by section five of
3 this article the contributions of the participant in the
4 same manner and with the same interest as provided to
5 those participants or beneficiaries otherwise eligible to
6 withdraw the participant's contributions under the re-
7 tirement plan, less the amount of any benefits which the
8 participant or his beneficiaries have previously received.

§5-10A-7. Eligibility for new participation upon rehabilitation.

1 Nothing in this article shall prohibit a participant made
2 ineligible for benefits by virtue of conviction of a crime
3 under this article, and who has paid the full penalty
4 imposed by law for such crime, from accepting a position
5 as an officer or employee of the same or different public
6 employer and joining a retirement plan as a new mem-
7 ber; but he and his beneficiaries shall remain forever
8 ineligible for any benefits arising from his former par-
9 ticipation in a retirement plan.

§5-10A-8. Setoff; unpaid benefits subject to execution, etc.

1 The state of West Virginia or any of its political sub-
2 divisions shall have the right of setoff against any unpaid
3 benefits which have accrued or may thereafter accrue

4 under the plan, including any contributions by the par-
5 ticipant, for any claim caused by less than honorable
6 service by the participant. Notwithstanding any pro-
7 vision of the law to the contrary, any unpaid benefits
8 which have accrued or may thereafter accrue shall be
9 subject to execution, garnishment, attachment or any
10 other legal process for collection of a judgment for the
11 recovery of loss or damages incurred by the state or its
12 political subdivision, caused by the participant's less than
13 honorable service.

§5-10A-9. Rules of construction.

1 If any provision of this article is determined to de-
2 prive a person of any property right which is vested
3 and is indefeasible as of the effective date of this article,
4 the provisions of this article shall nonetheless be effec-
5 tive as to any benefits or a part of any benefit under
6 a retirement plan which shall be deemed to vest on or
7 after the effective date of this article; and the right to
8 receive any benefit under a retirement plan, which right
9 shall vest on or after the effective date of this article,
10 is hereby conditioned upon the full compliance and ob-
11 servance of the provisions hereof and the rendering of
12 honorable service throughout the service in public em-
13 ployment or public office in respect of which such benefit
14 is payable.

§5-10A-10. Severability.

1 If any section, subsection, subdivision, provision,
2 clause or phrase of this article or the application thereof
3 to any person or circumstance is held unconstitutional
4 or invalid, such unconstitutionality or invalidity shall
5 not affect other sections, subsections, subdivisions, pro-
6 visions, clauses or phrases or applications of the article,
7 and to this end each and every section, subsection, sub-
8 division, provision, clause and phrase of this article are
9 declared to be severable. The Legislature hereby de-
10 clares that it would have enacted the remaining sections,
11 subsections, subdivisions, provisions, clauses and phrases
12 of this article even if it had known that any sections,
13 subsections, subdivisions, provisions, clauses and phrases

14 thereof would be declared to be unconstitutional or in-
15 valid, and that it would have enacted this article even
16 if it had known that the application thereof to any
17 person or circumstance would be held to be uncon-
18 stitutional or invalid.

CHAPTER 112

(Com. Sub. for H. B. 1315—By Mr. Peak and Mr. Kopp)

[Passed March 12, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-3. Companies and platoons; how constituted; training of members and other peace officers; salaries and bonds of members.

1 The superintendent shall create, appoint and equip a depart-
2 ment of public safety, which shall, in addition to the personnel
3 provided for in section two of this article, consist of four com-
4 panies or platoons. They shall be designated as companies "A,"
5 "B," "C" and "D." Each company or platoon shall be com-
6 posed of one captain, one lieutenant, one first sergeant,
7 seven sergeants, not more than seventeen corporals and such
8 number of troopers and troopers first class as the superinten-
9 dent may decide best, but such number of troopers and troop-
10 ers first class in any company or platoon shall not at any time
11 be less than twenty-five.

12 The superintendent shall provide adequate facilities for the
13 training of all members of the department and shall prescribe
14 a basic training course for newly enlisted members. He shall
15 also provide advanced or in-service training from time to time
16 for all members of the department. The superintendent shall
17 hold training classes for other peace officers in the state with-
18 out cost to such officers, except actual expenses for food,
19 lodging and school supplies.

20 Members of the department shall receive salaries, as follows:

21 The inspector shall receive an annual salary of sixteen
22 thousand one hundred sixty-four dollars; the major shall re-
23 ceive an annual salary of fourteen thousand seven hundred
24 ninety-one dollars; captains shall each receive an annual sal-
25 ary of thirteen thousand five hundred twenty-four dollars;
26 lieutenants shall each receive an annual salary of twelve thou-
27 sand nine hundred seventeen dollars; the master sergeants and
28 first sergeants shall each receive an annual salary of twelve
29 thousand two hundred forty-four dollars; sergeants shall each
30 receive an annual salary of eleven thousand nine hundred forty
31 dollars; corporals shall each receive an annual salary of eleven
32 thousand five hundred thirty-one dollars; troopers first class
33 shall each receive an annual salary of eleven thousand two
34 hundred forty dollars; and each newly enlisted trooper shall
35 receive a salary of eight hundred twelve dollars during the
36 period of his basic training, and upon the satisfactory comple-
37 tion of such training and assignment to active duty each
38 trooper shall receive, during the remainder of his first year's
39 service, a salary of eight hundred eighty-three dollars monthly.
40 During the second year of his service in the department each
41 trooper shall receive an annual salary of ten thousand seven
42 hundred sixty-five dollars; during the third year of his service
43 each trooper shall receive an annual salary of ten thousand
44 nine hundred thirty-seven dollars; and during the fourth year
45 and fifth year of his service and for each year thereafter each
46 trooper shall receive an annual salary of eleven thousand nine-
47 ty-five dollars. Each member of the department entitled there-
48 to by the provisions hereof shall receive an increase in salary
49 over that hereinbefore set forth in this section, for grade and
50 rank, based on length of service, including that heretofore and

51 hereafter served, with the department, as follows: At the end
52 of five years of service with the department, such member of
53 the department shall receive a salary increase of three hundred
54 dollars per year to be effective during his next three years of
55 service and like increases at three-year intervals thereafter,
56 until a total of six such increases shall be received and such
57 increases shall be cumulative.

58 In applying the foregoing salary schedule where salary in-
59 creases are provided for length of service, members of the de-
60 partment in service at the time this article becomes effective
61 shall be given credit for prior service and shall be paid such
62 salaries as the same length of service will entitle them to re-
63 ceive under the provisions hereof.

64 Each member of the department of public safety, except
65 the superintendent and civilian employees, shall, before enter-
66 ing upon the discharge of his duties, execute a bond with se-
67 curity in the sum of three thousand five hundred dollars pay-
68 able to the state of West Virginia, conditioned for the faith-
69 ful performance of his duties as such, and such bond shall be
70 approved as to form by the attorney general, and as to suffi-
71 ciency by the governor, and the same shall be filed with the
72 secretary of state and preserved in his office.

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CHAPTER 113

(Com. Sub. for H. B. 929—By Mrs. Neal and Mr. Dinsmore)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-eight, twenty-eight-a, twenty-eight-b, twenty-eight-c, twenty-eight-f, twenty-eight-g, twenty-eight-h, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-eight-l, relating to increasing retirement benefits; crediting members of the department of public safety with no more than five years toward their retire-

ment for prior active duty with the United States armed forces; providing certain qualifications for such credit; providing credit toward their retirement for members of the department of public safety who have left the department to serve in the armed forces of the United States during any period of armed conflict as declared by the Congress or ordered by the president; providing certain qualifications for such credit; and defining dependent child or children.

Be it enacted by the Legislature of West Virginia:

That sections twenty-eight, twenty-eight-a, twenty-eight-b, twenty-eight-c, twenty-eight-f, twenty-eight-g, twenty-eight-h, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-eight-l, all to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-28. Retirement; awards and benefits.

§15-2-28a. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.

§15-2-28b. Awards and benefits for disability—Incurred in performance of duty.

§15-2-28c. Awards and benefits for disability—Due to other causes.

§15-2-28f. Awards and benefits to dependents of member—When member dies in performance of duty, etc.

§15-2-28g. Awards and benefits to dependents of member—When member dies from nonservice-connected causes.

§15-2-28h. Awards and benefits to dependents of members—When member dies after retirement or after serving twenty years.

§15-2-28l. Dependent child or children—Qualifications.

§15-2-28. Retirement; awards and benefits.

1 (a) The retirement board shall retire any member of the
2 department of public safety when the member has both attained
3 the age of fifty-five years and completed twenty-five years of
4 service as a member of the department, including military ser-
5 vice credit granted under section twenty-eight-a of this article.

6 (b) The retirement board shall retire any member of the
7 department of public safety who has lodged with the secretary
8 of the retirement board his voluntary petition in writing for
9 retirement, and:

10 (1) Has or shall have completed twenty-five years of
11 service as a member of the department (including military
12 service credit granted under section twenty-eight-a of this
13 article); or

14 (2) Has or shall have attained the age of fifty years and
15 has or shall have completed twenty years of service as a
16 member of the department (excluding military service credit
17 granted under section twenty-eight-a of this article); or

18 (3) Being under the age of fifty years has or shall have
19 completed twenty years of service as a member of the de-
20 partment (excluding military service credit granted under
21 section twenty-eight-a of this article).

22 (c) When the retirement board retires any member under
23 any of the foregoing provisions of this section, the board shall,
24 by order in writing, make an award directing that the member
25 shall be entitled to receive annually and that there shall be
26 paid to the member from the death, disability and retirement
27 fund in equal monthly installments during the natural lifetime
28 of the member while in status of retirement one or the other
29 of two amounts, whichever is the greater, namely:

30 (1) An amount equal to four and one-half percent of the
31 aggregate of salary paid to the member during the whole
32 period of service as a member of the department of public
33 safety; or

34 (2) The sum of three thousand dollars.

35 When a member has or shall have served twenty years or
36 longer but less than twenty-five years as a member of the
37 department and shall be retired under any of the provisions of
38 this section before he shall have attained the age of fifty
39 years, payment of monthly installments of the amount of
40 retirement award to such member shall commence on the date
41 he attains the age of fifty years.

**§15-2-28a. Credit toward retirement for member's prior military
service; credit toward retirement when member has
joined armed forces in time of armed conflict.**

1 (a) For purposes of this section, the term "active military
2 duty" means full-time active duty with the armed forces of the

3 United States, namely, the United States air force, army, coast
4 guard, marines or navy; and service with the national guard
5 or reserve military forces of any of such armed forces when the
6 member has been called to active full-time duty and has re-
7 ceived no compensation during the period of such duty from
8 any person other than the armed forces.

9 (b) Any member of the department of public safety who has
10 previously served on active military duty shall be entitled to
11 and receive credit on the minimum period of service required
12 by law for retirement pay from the service of the department
13 of public safety under the provisions of this article for a period
14 equal to the active military duty not to exceed five years, sub-
15 ject to the following:

16 (1) That he has been honorably discharged from the armed
17 forces;

18 (2) That he substantiates by appropriate documentation or
19 evidence his period of active military duty;

20 (3) That he is receiving no benefits from any other retire-
21 ment system for his active military duty; and

22 (4) That, except with respect to disability retirement pay
23 awarded under section twenty-eight-c of this article, he has
24 actually served with the department for twenty years exclusive
25 of his active military duty.

26 The amount of retirement pay to which any such member is
27 entitled shall be calculated and determined as if he had been
28 receiving for the period of his active military duty a monthly
29 salary from the department equal to the average monthly salary
30 which he actually received from the department for his total
31 service with the department exclusive of the active military
32 duty. The superintendent is authorized to transfer and pay into
33 the death, disability and retirement fund from moneys appro-
34 priated for the department a sum equal to eighteen percent of
35 the aggregate of the salaries on which the retirement pay of all
36 such members has been calculated and determined for their
37 periods of active military duty. In addition, any person who
38 while a member of the department of public safety was com-
39 missioned, enlisted or inducted into the armed forces of the

40 United States or, being a member of the reserve officers' corps,
41 was called to active duty in said armed forces between the first
42 day of September, one thousand nine hundred forty, and the
43 close of hostilities in World War II, or between the twenty-
44 seventh day of June, one thousand nine hundred fifty, and the
45 close of the armed conflict in Korea on the twenty-seventh day
46 of July, one thousand nine hundred fifty-three, between the
47 first day of August, one thousand nine hundred sixty-four and
48 the close of the armed conflict in Vietnam, or during any other
49 period of armed conflict by the United States whether sanc-
50 tioned by a declaration of war by the Congress or by executive
51 or other order of the president, shall be entitled to and receive
52 credit on the minimum period of service required by law for
53 retirement pay from the service of the department of public
54 safety for a period equal to the full time he has or shall, pur-
55 suant to such commission, enlistment, induction or call, have
56 served with said armed forces subject to the following:

57 (1) That he has been honorably discharged from the armed
58 forces;

59 (2) That within ninety days after honorable discharge from
60 the armed forces he has presented himself to the superinten-
61 dent and offered to resume service as an active member of the
62 department;

63 (3) That he has made no voluntary act, whether by reen-
64 listment, waiver of discharge, acceptance of commission or
65 otherwise, to extend or participate in extension of the period
66 of service with the armed forces beyond the period of service
67 for which he was originally commissioned, enlisted, inducted
68 or called.

69 The amount of retirement pay to which any such member
70 shall be entitled shall be calculated and determined as if the
71 member has continued in the active service of the department
72 at the rank or grade to him appertaining at the time of such
73 commission, induction, enlistment or call, during a period co-
74 extensive with the time the member served with the armed
75 forces pursuant to the commission, induction, enlistment or
76 call. The superintendent of the department is authorized to
77 transfer and pay each month into the death, disability and re-

78 tirement fund from moneys appropriated for the department a
79 sum equal to eighteen percent of the aggregate of salary which
80 all such members would have been entitled to receive had they
81 continued in the active service of the department during a peri-
82 od coextensive with the time such members served with the
83 armed forces pursuant to the commission, induction, enlistment
84 or call: *Provided*, That the total amount of military service
85 credit allowable under this section shall not exceed five years.

§15-2-28b. Awards and benefits for disability—Incurred in performance of duty.

1 Any member of said department who has been or shall be-
2 come physically or mentally permanently disabled by injury,
3 illness or disease resulting from any occupational risk or
4 hazard inherent in or peculiar to the services required of
5 members of said department and incurred pursuant to or
6 while such member was or shall be engaged in the perfor-
7 mance of his duties as a member of said department shall, if, in
8 the opinion of the retirement board, he is by reason of such
9 cause unable to perform adequately the duties required of him
10 as a member of said department, be retired from active service
11 by the retirement board and thereafter such member shall be
12 entitled to receive annually and there shall be paid to such
13 member from the death, disability and retirement fund in equal
14 monthly installments during the natural lifetime of such mem-
15 ber or until such disability shall sooner terminate, an amount
16 equal to five percent of the total salary which would have been
17 earned by him during twenty-five years of service in said
18 department based on his average earnings while employed as
19 a member of said department. If such disability shall be
20 permanent and total to the extent that such member is or shall
21 be incapacitated ever to engage in any gainful employment, such
22 member shall be entitled to receive annually and there shall be
23 paid to such member from the death, disability and retirement
24 fund in equal monthly installments during the natural life-
25 time of such member or until such disability shall sooner termi-
26 nate, an amount equal to eight percent of the total salary
27 which would have been earned by him during twenty-five
28 years of service in said department based on his average earn-
29 ings while employed as a member of said department.

30 The superintendent is authorized to expend moneys from
31 funds appropriated for the department of public safety in pay-
32 ment of medical, surgical, laboratory, X-ray, hospital, ambu-
33 lance and dental expenses and fees, and reasonable costs and
34 expenses incurred in purchase of artificial limbs and other
35 approved appliances which may be reasonably necessary for
36 any member of said department who has or shall become
37 temporarily, permanently or totally disabled by injury, illness
38 or disease resulting from any occupational risk or hazard
39 inherent in or peculiar to the service required of members of
40 said department and incurred pursuant to or while such mem-
41 ber was or shall be engaged in the performance of his duties
42 as a member of said department. Whenever the superintendent
43 shall determine that any disabled member is ineligible to re-
44 ceive any of the aforesaid benefits at public expense the su-
45 perintendent shall, at the request of such disabled member,
46 refer such matter to the retirement board for hearing and final
47 decision.

§15-2-28c. Awards and benefits for disability—Due to other causes.

1 If any member while in active service of said department
2 has or shall, in the opinion of the retirement board, become
3 permanently disabled to the extent that such member cannot
4 adequately perform the duties required of a member of the
5 department from any cause other than those set forth in the
6 next preceding section and not due to vicious habits, in-
7 temperance or willful misconduct on his part, such member
8 shall be retired by the retirement board and, if such member
9 at the time of such retirement under this section shall have
10 served less than twenty years as a member of said department,
11 such member shall be entitled to receive annually and there
12 shall be paid to such member while in status of retirement,
13 from the death, disability and retirement fund in equal
14 monthly installments during a period equal to one half the
15 time such member has served as a member of said department,
16 a sum equal to four and one-half percent of the total salary
17 which would have been earned by him during twenty-five
18 years of service in said department based on his average
19 earnings while employed as a member of said department;
20 but if such member, at the time of such retirement under

21 the terms of this section, shall have served twenty years or
22 longer as a member of said department, such member shall
23 be entitled to receive annually and there shall be paid to
24 such member from the death, disability and retirement fund
25 in equal monthly installments, commencing on the date such
26 member shall be retired and continuing during the natural
27 lifetime of such member while in status of retirement, one or
28 the other of the two amounts, based upon either the aggregate
29 of salary paid to such member during the whole period of
30 service of such member or the period of twenty years or
31 longer during which such member at the time of such retire-
32 ment has, or shall have served as a member of said department,
33 whichever shall be the greater, to be determined in the manner
34 provided by subdivisions (1) and (2), subsection (c), section
35 twenty-eight of this article.

**§15-2-28f. Awards and benefits to dependents of member—When
member dies in performance of duty, etc.**

1 The widow or the dependent child or children or dependent
2 parent or parents of any member who has lost or shall lose
3 his life by reason of injury, illness or disease resulting from
4 an occupational risk or hazard inherent in or peculiar to the
5 service required of members while such member was or shall
6 be engaged in the performance of his duties as a member of
7 said department or if said member shall die from any cause
8 after having been retired pursuant to the provisions of section
9 twenty-eight-b of this article shall be entitled to receive and
10 shall be paid from the death, disability and retirement fund
11 benefits as follows: To the widow annually, in equal monthly
12 installments during her lifetime or until her remarriage one or
13 the other of two amounts, whichever shall be the greater,
14 namely:

15 (1) An amount equal to five percent of the total salary
16 which would have been earned by said deceased member
17 during twenty-five years of service in said department based
18 on his average earnings while employed as a member of said
19 department.

20 (2) The sum of three thousand dollars.

21 In addition thereto such widow shall be entitled to receive

22 and there shall be paid to her fifty dollars monthly for each
23 dependent child or children. If such widow shall die or
24 remarry or if there be no widow there shall be paid monthly
25 to such dependent child or children from the death, disability
26 and retirement fund the sum of fifty dollars each. If there
27 be no widow and no dependent child or children, there shall
28 be paid annually in equal monthly installments from said
29 death, disability and retirement fund to the dependent parents
30 of said deceased member during their joint lifetimes a sum
31 equal to the amount which a widow, without children, would
32 have received: *Provided*, That when there shall be but one
33 dependent parent surviving, such parent shall be entitled to
34 receive during his or her lifetime one half the amount which
35 both parents, if living, would have been entitled to receive.

§15-2-28g. Awards and benefits to dependents of member—When member dies from nonservice-connected causes.

1 In any case where a member while in active service of said
2 department, before having completed twenty years of service as
3 a member of said department, has died or shall die from any
4 cause other than those specified in section twenty-eight-f of
5 this article and not due to vicious habits, intemperance or will-
6 ful misconduct on his part, there shall be paid annually in
7 equal monthly installments from said death, disability and re-
8 tirement fund to the widow of such member during her natural
9 lifetime or until such time said widow remarries, a sum equal
10 to two and one-quarter percent of the total salary which would
11 have been earned by said member during twenty-five years of
12 service in said department based on his average earnings while
13 employed as a member of said department. If there be no
14 widow there shall be paid from said fund to each dependent
15 child or children of said deceased member the sum of fifty
16 dollars monthly. If there be no widow and no dependent child
17 or children there shall be paid annually in equal monthly in-
18 stallments from said fund to the dependent parents of said
19 deceased member during their joint lifetimes a sum equal to
20 the amount which a widow would have been entitled to receive:
21 *Provided*, That when there shall be but one dependent parent
22 surviving then such dependent parent shall be entitled to re-
23 ceive during his or her lifetime one half the amount which
24 both parents, if living, would have been entitled to receive.

§15-2-28h. Awards and benefits to dependents of members—When member dies after retirement or after serving twenty years.

1 When any member of said department has heretofore com-
2 pleted or hereafter shall complete twenty years of service or
3 longer as a member of said department and has died or shall
4 die from any cause or causes other than those specified in
5 section twenty-eight-b of this article before having been retired
6 by the retirement board, and when a member in retirement
7 status has died or shall die after having been retired by the
8 retirement board under the provisions of section twenty-eight
9 of this article, there shall be paid annually in equal monthly
10 installments from said fund to the widow of said member, com-
11 mencing on the date of the death of said member and contin-
12 uing during her lifetime or until remarriage an amount equal to
13 one half the retirement benefits said deceased member was
14 receiving while in status of retirement, or would have been
15 entitled to receive to the same effect as if such member had
16 been retired under the provisions of section twenty-eight of this
17 article immediately prior to the time of his death; and in addi-
18 tion thereto said widow shall be entitled to receive and there
19 shall be paid to her from said fund the sum of fifty dollars
20 monthly for each dependent child or children. If such widow
21 die or remarry, or if there be no widow there shall be paid
22 monthly from said fund to each dependent child or children of
23 said deceased member the sum of fifty dollars. If there be no
24 widow or no widow eligible to receive benefits and no depen-
25 dent child or children there shall be paid annually in equal
26 monthly installments from said fund to the dependent parents
27 of said deceased member during their joint lifetimes a sum
28 equal to the amount which a widow without children would
29 have been entitled to receive: *Provided*, That when there shall
30 be but one dependent parent surviving such parent shall be
31 entitled to receive during his or her lifetime one half the
32 amount which both parents, if living, would have been entitled
33 to receive.

§15-2-28l. Dependent child or children—Qualifications.

1 In any case where under the terms of this article benefits
2 are provided for "dependent child or children" such phrase

3 shall mean any child or children born to or adopted by a
4 member of the department of public safety under the age of
5 eighteen or where such child or children after reaching eight-
6 teen years of age continues as a full time student in an ac-
7 credited high school, college, university, business or trade
8 school, until such child reaches the age of twenty-three years
9 or where such child or children is an invalid as long as such
10 child or children remains an invalid, such benefits provided
11 for shall be paid. Benefits provided under the terms of this
12 article for "dependent child or children" shall be paid for so
13 long as they meet the foregoing qualifications and no longer.

CHAPTER 114

(H. B. 1677—By Mr Donley)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing and empowering the West Virginia department of public safety to trade a certain parcel of land with the S. George Company, a West Virginia corporation doing business in West Virginia, in return for another certain parcel of land of equal appraised value.

Be it enacted by the Legislature of West Virginia:

DEPARTMENT OF PUBLIC SAFETY AUTHORIZED TO TRANSFER LAND IN BROOKE COUNTY.

§1. Transfer and conveyance of certain tract of land with S. George Company, a West Virginia corporation.

1 The Legislature hereby finds and declares that in order
2 to provide adequate facilities for the department of public
3 safety detachment located in Wellsburg, Brooke County, it is
4 necessary to obtain a certain tract of land located adjacent
5 to the parcel of land now occupied and leased by the depart-
6 ment of public safety in Wellsburg, which the department of
7 public safety has agreed to purchase from the department of
8 highways.

9 The department of public safety is hereby authorized, upon
10 obtaining such from the department of highways, to trade that
11 certain parcel of real property situate in Wellsburg district,
12 Brooke County, West Virginia, with and to the S. George Com-
13 pany, a West Virginia corporation doing business in West
14 Virginia, more particularly bounded and described as follows:

15 Beginning at a point in the western revised right-of-way
16 line of West Virginia Route 2, said point being in the division
17 line between the Penn Central Railroad Company and the
18 West Virginia department of highways and forty-two feet rad-
19ially left of Centerline Station 4+00; Project F-175 (17),
20 Brooke County, West Virginia;

21 Thence, northwesterly with said division line, seventy-six
22 feet, more or less, to a point one hundred eighteen feet radially
23 left of Centerline Station 4+04;

24 Thence, northeasterly continuing with said division, one
25 hundred sixteen feet, more or less, to a point in the common
26 corner to the Penn Central Railroad Company, Mary E.
27 Mechling, and the West Virginia department of highways, said
28 point being one hundred eleven feet radially left of Centerline
29 Station 5+23;

30 Thence, southeasterly with the division line between Mary
31 E. Mechling and the West Virginia department of highways,
32 in a reverse centerline direction, seventy feet, more or less,
33 to a point in the western revised right-of-way line of West Vir-
34 ginia Route 2, said point being forty-two feet, radially left of
35 Centerline Station 5+17;

36 Thence, southwesterly with said revised right-of-way line,
37 one hundred sixteen feet, more or less, to the place of begin-
38 ning and containing twenty one-hundredths acre, more or less,
39 and also being parts of the same property conveyed to the
40 party of the first part by two deeds, the first from Anna L.
41 McCollough Mossgrove and husband dated January thirty-
42 first, one thousand nine hundred fifty-eight, of record in the
43 office of the clerk of the county commission of said Brooke
44 County in Deed Book 133, page 440; and the second from
45 Margaret F. McCreary and husband dated April twenty-third,

46 one thousand nine hundred fifty-eight, of record in said clerk's
47 office in Deed Book 134, page 407.

48 In consideration of the above described property conveyed
49 by the department of public safety to the S. George Company,
50 the department of public safety is hereby authorized to accept
51 that certain parcel of land owned in fee by the S. George Com-
52 pany, measuring approximately eighty-seven feet by one hun-
53 dred seventy-five feet, being rectangular in shape, situate on
54 the westerly side of the property now owned by the department
55 of highways and leased to the department of public safety in
56 the town of Wellsburg, Wellsburg Tax District, Brooke County,
57 West Virginia, and containing approximately thirty-three one-
58 hundredths acres.

59 Both parcels of property described are of approximate
60 equal value as appraised by the department of highways.

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CHAPTER 115

(H. B. 893—By Mr. Speaker, Mr. McManus, and Mr. Caudle)

[Passed February 17, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article eleven, chapter forty-seven of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, relating to the fair trade act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. FAIR TRADE ACT.

§1. Repeal of article establishing the fair trade act.

1 Article eleven, chapter forty-seven of the code of West
2 Virginia, one thousand nine hundred thirty-one, as amended,
3 is hereby repealed.

CHAPTER 116

(S. B. 135—By Mr. Brotherton, Mr. President, and Mr. Nelson)

[Passed March 8, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to the regulation of business practices between motor vehicle manufacturers, distributors and dealers; jurisdiction of nonresident manufacturers and distributors; definitions; certain acts prohibited; remedies; liabilities for damages; dealer's duties; writing required; checklists and repairs; warranty work; and claims procedure.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seventeen, to read as follows:

ARTICLE 17. REGULATION OF BUSINESS PRACTICES BETWEEN MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS.

- §47-17-1. Legislative findings.
- §47-17-2. Governing law.
- §47-17-3. Actions against nonresident manufacturers and distributors.
- §47-17-4. Definitions.
- §47-17-5. Certain acts prohibited.
- §47-17-6. Remedies.
- §47-17-7. Liability for damages.
- §47-17-8. Dealer's duties.
- §47-17-9. Writing required.
- §47-17-10. Repair checklist; repairs; warranty work; claims procedure.

§47-17-1. Legislative findings.

- 1 The Legislature finds and declares that the distribution
- 2 and sale of motor vehicles in this state vitally affects the
- 3 general economy and the public welfare and that in order
- 4 to promote the public welfare and in exercise of its
- 5 police power, it is necessary to regulate motor vehicle

6 dealers, manufacturers, distributors, and representatives
7 of vehicle manufacturers and distributors doing business
8 in this state in order to avoid undue control of the inde-
9 pendent new motor vehicle dealer by the vehicle manu-
10 facturer or distributor and to insure that dealers fulfill
11 their obligations under their franchises and provide ade-
12 quate and sufficient service to consumers generally.

§47-17-2. Governing law.

1 In accord with the settled public policy of this state
2 to protect the rights of its citizens, it is hereby enacted
3 as the law of West Virginia that each franchise or agree-
4 ment between a manufacturer or distributor and a dealer
5 who is a resident of West Virginia, to be performed in
6 substantial part in West Virginia, shall be construed and
7 governed by the laws of the state of West Virginia, re-
8 gardless of the state in which it was made or executed
9 and of any provision in such franchise or agreement to
10 the contrary.

11 The provisions of this article shall apply only to any
12 such franchise or agreement which is entered into or
13 renewed subsequent to the effective date of this article.

§47-17-3. Actions against nonresident manufacturers and distributors.

1 Any franchise between a nonresident manufacturer or
2 distributor and a dealer who is a resident of West Vir-
3 ginia to be performed in substantial part in West Vir-
4 ginia shall subject such nonresident manufacturer or
5 distributor to the jurisdiction of the circuit courts of this
6 state as hereinafter provided. The secretary of state
7 shall be the true and lawful attorney of such nonresident
8 manufacturer or distributor upon whom all lawful
9 process or service may be made in any action or pro-
10 cedure.

§47-17-4. Definitions.

1 As used in this article:

2 (a) "Person" means individual, firm, partnership,

3 association, joint stock company, corporation, trust or any
4 combination of individuals.

5 (b) "Dealer" means a person engaged in the business
6 of selling, displaying, offering for sale, or dealing in new
7 motor vehicles at the retail level.

8 (c) "Manufacturer" means a person who manufac-
9 tures, assembles, or imports new motor vehicles.

10 (d) "Distributor" means a person who sells or dis-
11 tributes new motor vehicles to franchise dealers or who
12 maintains subdistributors or representatives who sell
13 or distribute new motor vehicles to franchise dealers.

14 (e) "Franchise" means a contract, agreement or any
15 other legal device or means used to describe and establish
16 the contractual relationship between manufacturers, dis-
17 tributors and dealers of new motor vehicles.

18 (f) "Coerce" means to induce action or inaction by
19 threats.

20 (g) "Just cause" means reasonable cause based on
21 reasonable grounds, and requires a fair and honest cause
22 or reason based on good faith.

23 (h) "Area of influence or responsibility" means the
24 geographical area which a franchise dealer can document
25 he significantly services in respect to sales and servicing
26 of new motor vehicles.

§47-17-5. Certain acts prohibited.

1 Notwithstanding the terms, provisions or conditions of
2 any franchise, no manufacturer or distributor shall:

3 (a) Terminate, cancel or fail to renew a franchise
4 without just cause, except with the prior consent of the
5 dealer. Notwithstanding the provisions of any franchise
6 setting forth prima facie grounds or just cause for ter-
7 minating, canceling or failing to renew a franchise, such
8 determination of just cause shall be made by a court of
9 law after due consideration of, but without being bound
10 by the prima facie grounds or definition of just cause
11 contained in such franchise. The burden of proof of just
12 cause shall be on the manufacturer or distributor.

13 (b) Refuse without just cause to accept as successor
14 dealer the widow, son or other member of the family of a
15 deceased dealer, who succeeds to the deceased person's
16 place in the dealership business. However, no member of
17 the family may succeed to a franchise unless the manufac-
18 turer has been given written notice of the identity,
19 financial ability and qualifications of such member of the
20 family and in no event shall the successor be refused
21 acceptance until after two months' notice in writing is
22 first given by the manufacturer or distributor to the suc-
23 cessor dealer.

24 (c) Sell, lease or rent goods, motor vehicles, or
25 render any service normally performed and required of
26 dealers under the franchise agreement with the manu-
27 facturer in unfair competition with such dealer, except
28 that this subdivision does not apply to a sale, lease or
29 rental to, or service performed for, an agency of federal,
30 state or local government.

31 (d) Require any dealer to participate in or contribute
32 to any local or national advertising fund, or participate in
33 any contests, "giveaways" or other sales devices, without
34 the dealer's consent.

35 (e) Withhold or delay delivery of motor vehicles out of
36 the ordinary course of business.

37 (f) Discriminate against any dealer in the allocation
38 of, or through withholding from delivery of, certain
39 models of motor vehicles ordered by the dealer out of
40 the ordinary course of business.

41 (g) Amend unilaterally a dealer's allotment of motor
42 vehicles or quota in sales contests without reasonable
43 cause.

44 (h) Coerce, attempt to coerce a dealer, or act other
45 than honestly in accordance with reasonable standards
46 for fair dealing, with respect to the dealer's right to sell,
47 assign, transfer or otherwise dispose of his business, in
48 all or in part: *Provided*, That the dealer shall have no
49 right to sell, assign or transfer the franchise without the
50 manufacturer's consent.

51 (i) Coerce or attempt to coerce any dealer by any of
52 the following methods: (1) Threaten to refuse or fail to
53 renew or extend a lease of premises controlled by a manu-
54 facturer, (2) threaten to award an additional franchise
55 or agreement to another person for the sale of the same
56 product as a dealer in that dealer's area of influence or
57 responsibility, (3) threaten to withhold or delay the
58 delivery of motor vehicles, parts or other saleable goods,
59 (4) threaten to terminate, cancel or fail to renew a
60 dealer's franchise or agreement, or (5) any other method
61 of coercion as follows: (i) Expand a dealer's facilities,
62 increase a dealer's sales personnel, purchase more parts or
63 accept programs for sales and the operation of a dealer's
64 business, (ii) accept delivery of any motor vehicle, parts,
65 accessories or other similar commodities not ordered by a
66 dealer, (iii) consent to participate and participate in or
67 contribute to any local or national advertising fund, or
68 participate in any contests, "giveaways" or other sales
69 devices, (iv) compel a dealer to yield to demands of a
70 manufacturer or distributor for increased sales, expansion
71 of facilities or improvement of operations inconsistent
72 with good business practices.

73 Nothing in this section shall prohibit or prevent a
74 manufacturer or distributor from performing, or requiring
75 the performance by a dealer of any of the provisions of
76 the franchise where such performance or requirement is
77 fair, reasonable and equitable under all the surrounding
78 circumstances, and consistent with good business practices
79 on the part of both dealer and manufacturer or dis-
80 tributor.

§47-17-6. Remedies.

1 Any circuit court of this state shall have jurisdiction
2 to hear and determine all issues or disputes arising under
3 a franchise, or under the provisions of this article. In
4 addition to general relief, the court shall have specific
5 authority to: (a) Grant injunctions against violations or
6 threatened violations of any provision of the franchise
7 or of this article; (b) by declaratory judgment or other-
8 wise determine the rights and remedies of each party;
9 (c) as a condition to ordering or authorizing the termina-

tion, cancellation or failure to renew a franchise for just cause, but without the consent of the dealer, to require the manufacturer or distributor to purchase from the dealer (1) at full and fair market value all or any portion of the machinery, materials, and equipment of the dealer reasonably utilized in the marketing of the manufacturer's goods or services which were acquired by the dealer at the written request of manufacturer or distributor; and (2) to purchase from the dealer all or any portion of the dealer's inventory of goods, specialized tools, sales aids, current parts and accessories purchased by the dealer in accordance with the requirements of the manufacturer, at net cost less freight and cartage; (d) to assess and fix the value of any item required to be purchased as provided in this section; (e) to order that a dealer shall remain in business until a final disposition by the courts of such case pending under this section; and (f) to assess and award damages in favor of the party entitled thereto under this article.

In any action arising over the question of the termination, cancellation or failure to renew a franchise or agreement, the burden of proof to show the manufacturer's or distributor's just cause shall be on the manufacturer or distributor. Any such action hereunder shall be brought in the circuit court of the county wherein the dealer has his principal place of business.

§47-17-7. Liability for damages.

Any manufacturer or distributor who directly or through an officer, employee or agent violates any of the provisions of this article shall be liable to the dealer injured by such violation for all reasonable damages sustained by the dealer that are the proximate result of a violation by the manufacturer or its officer, employee or agent.

§47-17-8. Dealer's duties.

A dealer having an agreement or franchise shall maintain adequate physical facilities and personnel so that the manufacturer's product is at all times properly represented in the dealer's sales area so that the reputation

- 5 and trademark of the manufacturer shall be protected
- 6 and so that the general public will receive adequate
- 7 servicing of manufacturer's products, and the dealer shall
- 8 act at all times in good faith.

§47-17-9. Writing required.

- 1 The following actions shall be in writing and signed
- 2 by the manufacturer, distributor or its authorized repre-
- 3 sentative: (a) The creation, modification, interpretation
- 4 or termination of the franchise; (b) failure to renew or
- 5 extend such franchise; (c) the original investment or the
- 6 increasing or supplementing of the investment by the
- 7 dealer; (d) the franchise and its stipulations as to facili-
- 8 ties, purchases of goods, vehicles, accessories, parts or
- 9 commodities by the dealer from the manufacturer; (e)
- 10 the sufficiency of the dealer's performance as a dealer;
- 11 (f) advertising and promotional activity by the dealer;
- 12 and (g) the dealer's right to sell, assign or transfer, or
- 13 otherwise dispose of his business.

§47-17-10. Repair checklist; repairs; warranty work; claims procedure.

- 1 Each manufacturer shall furnish to each of its dealers
- 2 and franchisees a checklist of authorized work which the
- 3 manufacturer obligates the dealer to perform in preparing
- 4 a motor vehicle for retail sale and which the dealer is
- 5 required to perform.

- 6 Each manufacturer shall reasonably compensate its
- 7 dealers for work and services the dealers are required to
- 8 perform in connection with the dealer's delivery and
- 9 preparation obligations according to the manufacturer's
- 10 checklist.

- 11 Each manufacturer shall compensate its dealers for all
- 12 warranty work performed. The rate of pay for such
- 13 warranty work shall be mutually agreed upon by the
- 14 dealer and manufacturer. In the event the dealer and
- 15 manufacturer shall not mutually agree as to the rate of
- 16 pay, the rate shall be determined by any circuit court as
- 17 authorized by this article.

- 18 Each manufacturer shall pay or credit each dealer for
19 preparation work for retail sales and warranty work
20 performed by the dealer within thirty days after claim for
21 compensation has been approved by the manufacturer.
22 All claims shall be approved or disapproved by the manu-
23 facturer within thirty days after the request thereof.

CHAPTER 117

(Com. Sub. for H. B. 1257—By Mr. Albright and Mr. Farley)

[Passed March 9, 1976; in effect ninety days from passage. Disapproved by the Governor, and repassed notwithstanding his objections.]

AN ACT to amend and reenact article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state administrative procedures and rule making; defining rule or regulation; providing for rules of procedure; relating to validity of rules or regulations; providing for the establishment and maintenance by the secretary of state of a state register; providing for notice of hearing and taking of evidence; providing for filing findings and determinations for administrative regulations in state register and for evidence to be deemed public record; providing for filing of proposed rules and regulations in the state register and with the governor and Legislature; relating to notification of opportunity to submit data, etc., to proposed rules or regulations; providing for opportunity to submit such data, etc., providing that prior rules or regulations are to remain in effect; providing for the creation of a state legislative rule-making review committee and effective date for rules or regulations; providing for submission of all approved or disapproved rules or regulations to the Legislature and their approval or disapproval by the Legislature; relating to the withdrawal of proposed rules or regulations; and providing for temporary rules or regulations and the procedure for promulgation thereof.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-nine-a of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. RULE MAKING.

- §29A-3-1. Definition of rule or regulation.
- §29A-3-2. Rules of procedure required.
- §29A-3-3. Validity of rules or regulations.
- §29A-3-4. Establishment and maintenance of a state register by secretary of state.
- §29A-3-5. Notice of hearing and taking of evidence.
- §29A-3-6. Filing findings and determinations for administrative regulations in state register; evidence deemed public record.
- §29A-3-7. Filing of proposed rules and regulations in state register and Legislature.
- §29A-3-8. Notification of opportunity to submit data, amendments, etc., to proposed rule or regulation.
- §29A-3-9. Opportunity for interested persons to submit data, etc., concerning proposed rule or regulation.
- §29A-3-10. Final adoption of proposed rules and regulations.
- §29A-3-11. Legislative rule-making review committee; when rule or regulation becomes effective.
- §29A-3-12. Submission of rules to Legislature.
- §29A-3-13. Withdrawal of proposed rules or regulations.
- §29A-3-14. Temporary rules or regulations; procedure for promulgation; judicial review.
- §29A-3-15. Prior rules or regulations remain in effect.

§29A-3-1. Definition of rule or regulation.

- 1 As used in this article, "rule or regulation" means a rule
- 2 as defined in section one, article one of this chapter.

§29A-3-2. Rules of procedure required.

- 1 In addition to other rule-making requirements imposed by
- 2 law:
 - 3 (a) Each agency shall adopt rules or regulations governing
 - 4 the formal and informal procedures prescribed or authorized by
 - 5 this chapter. Such rules or regulations shall include rules of
 - 6 practice before the agency, together with forms and instruc-
 - 7 tions.
 - 8 (b) To assist interested persons dealing with it, each agency
 - 9 shall so far as deemed practicable supplement its rules or
 - 10 regulations with descriptive statements of its procedures.

§29A-3-3. Validity of rules or regulations.

1 Any rules or regulations promulgated after the effective
2 date of this section and any amendment promulgated hereafter
3 to any rule or regulation heretofore promulgated under the
4 delegation of the power of the Legislature or otherwise shall
5 only be effective if promulgated in accordance with the provi-
6 sions of this article.

§29A-3-4. Establishment and maintenance of a state register by secretary of state.

1 For the purpose of providing a compilation of the rules and
2 regulations of the various agencies, and for providing notice
3 of proposed rules or regulations or the taking of evidence
4 with respect thereto, the secretary of state shall establish
5 and maintain a state register. Every proposed rule or regula-
6 tion, every finding and determination for a rule or regula-
7 tion and every rule or regulation filed with the secretary
8 of state shall be admitted to record in the state register.

9 Within ninety days after the effective date of this section,
10 the secretary of state shall arrange all rules or regulations
11 heretofore filed with him in a volume or record and shall add
12 thereto such proposed rules or regulations, notices, amend-
13 ments, whether by the agency or the Legislature, and all resolu-
14 tions disapproving or amending rules or regulations, in whole or
15 in part, in such form and fashion as may in his discretion be
16 suitable. This state register and supplements thereto shall
17 be duplicated and furnished on a subscription basis to any per-
18 son who shall apply therefor. The cost of subscription shall be
19 determined from time to time by the secretary of state who shall
20 fix the price therefor at a level he considers sufficient to
21 defray the cost of preparing and distributing the register and
22 supplements thereto on a weekly basis. The register shall be
23 divided into proposed and final effective rules or regulations
24 and notices or other materials considered by the secretary of
25 state to be suitable. From time to time but at least biennially,
26 the secretary of state shall publish permanent volumes of the
27 rules or regulations promulgated and made effective since the
28 last such publication.

§29A-3-5. Notice of hearing and taking of evidence.

1 Except for a rule or regulation of the type described in

2 subsection (a), section seven of this article, if a statute
3 requires that an agency make certain findings and determina-
4 tions as a condition precedent to promulgation of a rule or
5 regulation, the agency shall cause to be filed in the state register
6 a notice of hearing for the taking of evidence upon the issues
7 to be found, which notice shall state the time and place of the
8 hearing and generally describe the issues to be decided. In
9 addition, the agency may cause to be published in every county
10 of the state as a Class I legal publication a notice of such
11 hearing which notice shall state the time and place of the
12 hearing and describe generally the issues to be decided. The
13 agency may limit the presentations at such hearing to written
14 matter or may permit oral presentations. Every citizen or other
15 interested party may appear and be heard at such hearing. If
16 only written statements are received, the date of hearing shall
17 be the last day upon which statements may be filed with the
18 agency.

§29A-3-6. Filing findings and determinations for administrative regulations in state register; evidence deemed public record.

1 Before any rules or regulations mentioned in section five
2 shall be effective, the agency shall promulgate the findings
3 and determinations required and state fully and succinctly
4 the reasons therefor and file such findings and determina-
5 tions in the state register. The statement of reasons and
6 a transcript of all evidence received pursuant to notice
7 shall be public records and shall be carefully preserved by
8 the agency and be open for public inspection and copying
9 for a period and term of not less than five years from the
10 date of the hearing.

§29A-3-7. Filing of proposed rules and regulations in state register and Legislature.

1 (a) If a proposed rule or regulation fixes rules of pro-
2 cedure, practice or evidence for dealings with or proceed-
3 ings before the agency a copy thereof shall be filed in the
4 state register.

5 (b) All other rules or regulations shall be filed in the
6 state register, with the governor, and with the legislative rule-

7 making committee in accordance with section eleven of this
8 article.

§29A-3-8. Notification of opportunity to submit data, amendments, etc., to proposed rule or regulation.

1 When a proposed rule or regulation is filed in the state
2 register there shall be attached thereto a notice of the time,
3 date and place at which interested parties may submit data,
4 objections, suggested amendments, views, evidence and argu-
5 ments orally or in writing concerning the proposed rule or
6 regulation, which notice must be given not less than thirty
7 nor more than sixty days prior to the date fixed. An agency
8 may, in its discretion, also publish the required notice, at the
9 expense of the agency. If an agency determines to give notice
10 also by publication, the notice shall be published as a Class I
11 legal advertisement in compliance with the provisions of article
12 three, chapter fifty-nine of this code, and the publication
13 area for such publication shall be determined by the agency.
14 No rule or regulation hereafter adopted is valid unless
15 adopted in substantial compliance with the provisions of this
16 section.

§29A-3-9. Opportunity for interested persons to submit data, etc., concerning proposed rule or regulation.

1 On the date and at the time and place specified in the
2 notice required by section eight of this article an opportunity
3 shall be afforded all interested persons to submit data, objec-
4 tions, suggested amendments, views, evidence and arguments
5 orally or in writing concerning the proposed rule or regulation.

§29A-3-10. Final adoption of proposed rules and regulations.

1 After the hearing provided in section nine, the agency
2 shall either finally adopt the rule or regulation as proposed,
3 amend and finally adopt the proposed rule and regulation, as
4 amended, or withdraw the proposed rule or regulation. No
5 amendment may change the main purpose of the proposed rule
6 or regulation.

7 The agency shall file in the state register a notice of
8 its action, including the text of the rule or regulation as
9 finally adopted, and a proposed effective date. Except in the

10 case of a rule or regulation issued pursuant to section fourteen
11 of this article such proposed effective date shall not be less
12 than thirty days after the date of filing of such notice. In
13 cases of rules or regulations required to be filed with the
14 legislative rule-making review committee such notice shall also
15 contain a certificate showing the date of presentation of the
16 proposed rule or regulation to such committee.

**§29A-3-11. Legislative rule-making review committee; when rule
or regulation becomes effective.**

1 (a) There is hereby created a statutory body to be known
2 as the legislative rule-making review committee, to review all
3 rules or regulations of the several agencies following the
4 proposal thereof, except those rules or regulations described
5 in subsection (a), section seven of this article. The com-
6 mittee shall be composed of six members of the Senate, ap-
7 pointed by the president of the Senate, and six members of the
8 House of Delegates, appointed by the speaker of the House of
9 Delegates. In addition, the president of the Senate and the
10 speaker of the House of Delegates shall be ex officio nonvoting
11 members of the committee and shall designate the cochairmen.
12 Not more than four of the voting members of the committee
13 from each house shall be members of the same political party.
14 The members shall serve until their successors shall have been
15 appointed as heretofore provided. Members of the committee
16 shall receive such compensation and expenses as provided in
17 article two-a of chapter four of this code. Such expenses and
18 all other expenses, including those incurred in the employment
19 of legal, technical, investigative, clerical, stenographic, advisory
20 and other personnel shall be paid from an appropriation to be
21 made expressly for the legislative rule-making review commit-
22 tee, but if no such appropriation be made, such expenses shall
23 be paid from the appropriation under "Account No. 103 for
24 Joint Expenses," but no expense of any kind whatever payable
25 under said Account No. 103 for joint expenses shall be incurred
26 unless first approved by the joint committee on government and
27 finance. The committee shall meet upon call of the cochairmen
28 and may meet at any time, both during sessions of the Legisla-
29 ture and in the interim.

30 (b) No adoption, amendment or repeal of any rule or regu-
31 lation, except a rule or regulation described in subsection (a),

32 section seven of this article or a rule or regulation issued
33 pursuant to section fourteen thereof, shall be effective until
34 seventeen copies thereof have been presented to the legislative
35 rule-making review committee by the agency proposing such
36 rule or regulation at a regular meeting of said committee, and
37 approved by the committee. The form of proposed rules or
38 regulations which are presented to the committee shall be as
39 follows: New language shall be underlined and language to be
40 deleted shall be stricken-through but clearly legible. The com-
41 mittee shall study all proposed rules or regulations and, in its
42 discretion, may hold public hearings thereon.

43 Within six months after the proposed rule or regulation is
44 presented to the committee, the committee shall either approve,
45 approve in part and disapprove in part, or disapprove the
46 proposed rule or regulation and file notice of its action in
47 the state register and with the agency. In the event no notice
48 of approval or disapproval is filed by the committee in the
49 state register within one hundred eighty days after the
50 presentation of the proposed rule or regulation to the commit-
51 tee, the committee shall be deemed to have approved all of the
52 proposed rule or regulation for the purposes of this section. To
53 the extent that a proposed rule or regulation is approved by the
54 committee it shall be effective thirty days after the filing of
55 notice of approval or on the effective date proposed by the
56 agency, whichever is later, or if no notice is filed, thirty
57 days after approval is deemed to have occurred for the purposes
58 of this section. The secretary of state shall note every such
59 effective date in the state register. To the extent that the
60 committee disapproves a proposed rule or regulation no agency
61 shall thereafter issue any regulation or directive or take
62 other action to implement such disapproved rule or regulation
63 except that the Legislature may reverse such disapproval under
64 the provisions of section twelve of this article. If the com-
65 mittee disapproves any rule or regulation proposed for the
66 purpose of implementing a federally subsidized or assisted
67 program the Legislature shall either sustain or reverse every
68 such disapproval.

69 (c) Any rule or regulation described in subsection (a),
70 section seven of this article shall be effective thirty days
71 after filing in the state register.

§29A-3-12. Submission of rules to Legislature.

1 No later than thirty days before the end of each regular
2 session of the Legislature, the cochairmen of the legislative
3 rule-making review committee shall submit to their respective
4 houses of the Legislature for study, copies of all proposed
5 rules or regulations which have been considered by the com-
6 mittee under section eleven of this article which have not been
7 previously submitted to the Legislature for study. Such rules
8 or regulations shall be referred by the speaker of the House of
9 Delegates and by the president of the Senate to an appropriate
10 standing committee of the respective houses for consideration.
11 Such committee, or a subcommittee thereof, shall schedule
12 hearings on any proposed rule or regulation which has been
13 disapproved, in whole or in part, by the legislative rule-making
14 review committee. The Legislature may by concurrent resolu-
15 tion either sustain or reverse, in whole or in part, the action of
16 the legislative rule-making review committee under the pro-
17 visions of section eleven, except that if the Legislature fails
18 during its regular session to sustain by resolution the disap-
19 proval of a rule or regulation proposed for the purpose of im-
20 plementing a federally subsidized or assisted program, such
21 disapproval shall be deemed reversed for purposes of this sec-
22 tion and the proposed rule or regulation shall become effective
23 thirty days after the adjournment sine die of such regular ses-
24 sion or on the effective date proposed by the agency, whichever
25 is later. Any action of the Legislature under the provisions of
26 this section shall be effective as of the date on which the
27 concurrent resolution has been adopted by both houses of the
28 Legislature: *Provided*, That the clerk of the house originating
29 such resolution shall forthwith file a copy thereof in the
30 state register and with the agency; and any rule or regulation or
31 part thereof made effective by such resolution shall only be
32 effective thirty days after such concurrent resolution is filed in
33 the state register or upon the effective date proposed by the
34 agency, whichever is later: *Provided, however*, That if such
35 concurrent resolution disapproves any rule or regulation or part
36 thereof no agency shall thereafter issue any regulation or direc-
37 tive or take other action to implement such disapproved rule or
38 regulation or part thereof.

§29A-3-13. Withdrawal of proposed rules or regulations.

1 Any proposed rule or regulation may be withdrawn by the
2 agency at any time before the effective date thereof or thirty
3 days before the expiration of the session of the Legislature
4 at which such rules or regulations may be reviewed, whichever
5 date is sooner.

§29A-3-14. Temporary rules or regulations; procedure for promulgation; judicial review.

1 Any agency may, without hearing, find that an emergency
2 exists requiring that temporary rules or regulations be promul-
3 gated. Such temporary rules or regulations, together with a
4 statement of the facts and circumstances constituting the
5 emergency, shall be filed in the state register and such tem-
6 porary rules or regulations shall be effective immediately,
7 except that no such rule or regulation shall remain in effect
8 longer than ninety days unless there is compliance with all the
9 provisions of sections five through nine and section eleven of
10 this article.

§29A-3-15. Prior rules or regulations remain in effect.

1 Every rule or regulation heretofore lawfully promulgated
2 pursuant to the prior provisions of this article shall remain in
3 full force and effect, except as the same shall be amended
4 pursuant to this article, until revoked by appropriate action
5 of the agency or operation of law.

CHAPTER 118

(H. B. 1508—By Mr. Lehr and Mr. Brown)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising the amount of the surety bond required by correspondence, business, occupational and trade schools to ten thousand dollars; making such schools responsible for liability; extending indemnification

to persons suffering loss as a result of schools inability to meet contractual agreements; and increasing the fee for a permit for such schools to ten dollars.

Be it enacted by the Legislature of West Virginia:

That section ten, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-10. Permits required for certain correspondence, business, occupational and trade schools; reports, issuance, renewal and revocation of permits; surety bond; penalty and enforcement.

1 Except for those correspondence, business, occupational and
2 trade schools that are members of nationally recognized
3 accrediting associations approved by the West Virginia board
4 of education, it shall be unlawful for any person representing a
5 correspondence, business, occupational or trade school inside
6 or outside this state to solicit, sell or offer to sell courses
7 of instruction to any resident of this state for consideration
8 or remuneration unless the school first obtains a permit from
9 the West Virginia board of education in the manner and on
10 the terms herein prescribed.

11 All schools exempted from the requirement of a permit
12 under this section shall, before recruiting any students in
13 West Virginia, secure authorization from the state board of
14 education. The board may refuse authorization to any such
15 school, regardless of that school's membership in any accredit-
16 ing association, if the board has reason to believe that the
17 school engages in practices which are inconsistent with this
18 section or with rules and regulations issued pursuant thereto.
19 All correspondence, business, occupational and trade schools
20 located in this state, including those schools which are not
21 required to secure permits under this section, shall make
22 annual reports to the state board of education, on forms
23 furnished by the board, providing such appropriate information
24 as the board reasonably may require.

25 The application for a permit shall be made on forms to be

26 furnished by the board. The application shall be accompanied
27 by a fee of ten dollars and by a surety bond in the penal sum
28 of ten thousand dollars. Such bond may be continuous and
29 shall be conditioned to provide indemnification to any student
30 suffering loss as a result of any fraud or misrepresentation
31 used in procuring his enrollment, or failure of the school to
32 meet contractual obligations. The bond shall be given by the
33 school itself as a blanket bond covering all of its representa-
34 tives. The surety on any such bond may cancel the same
35 upon giving thirty days' notice in writing to the principal
36 on said bond and to the state board of education and there-
37 after shall be relieved of liability for any breach of condition
38 occurring after the effective date of said cancellation.

39 A permit shall be valid for one year from the date on
40 which it is issued, and, upon application, accompanied by a
41 fee of ten dollars and the surety bond as herein required, may
42 be renewed.

43 All fees collected for the issuance or renewal of such
44 permits shall be deposited in the state treasury to the credit
45 of the general school fund.

46 All correspondence, business, occupational or trade schools
47 which have been issued a permit, or who have been authorized
48 because of their exempt status, to sell courses to residents of
49 this state shall furnish to the West Virginia board of education
50 a list of its official representatives. Each school shall be issued
51 a certificate of identification by the state board of education for
52 each of its official representatives.

53 A permit issued hereunder, upon fifteen days' notice and
54 after a hearing, if a hearing is requested by the permit holder,
55 may be revoked by the board of education for fraud or
56 misrepresentation in soliciting or enrolling students, for failure
57 of the school to fulfill its contract with one or more students
58 who are residents of West Virginia, or for violation of or
59 failure to comply with any provision of this section or with
60 any regulation of the state board of education.

61 The issuance of a permit pursuant to this section does not
62 constitute approval or accreditation of any course or school. No
63 school nor any representative of a school shall make any repre-
64 sentation stating, asserting or implying that a permit issued

65 pursuant to this section constitutes approval or accreditation by
66 the state of West Virginia, state board of education or any
67 other department or agency of the state.

68 The state board of education is hereby authorized to adopt
69 rules and regulations for the administration and enforcement
70 of the provisions of this section, and to establish an advisory
71 committee of not more than five owners or other representatives
72 of privately owned correspondence, business, occupational and
73 trade schools.

74 Any person or any proprietor or chief administrative
75 officer of any school violating any provision of this section
76 shall be guilty of a misdemeanor, and, upon conviction thereof,
77 shall be fined not more than two hundred dollars, or im-
78 prisoned in the county jail not more than sixty days, or both
79 fined and imprisoned. No correspondence, business, occupa-
80 tional or trade school shall maintain an action in any court
81 of this state to recover for services rendered pursuant to a
82 contract solicited by the school if the school is required under
83 this section to obtain a permit and did not hold a valid permit
84 at the time the contract was signed by any of the parties
85 thereto. The attorney general or any county prosecuting at-
86 torney, at the request of the state board of education or upon
87 his own motion, may bring any appropriate action or pro-
88 ceeding in any court of competent jurisdiction for the en-
89 forcement of the provisions of this section relating to permits,
90 bonds and sureties.

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CHAPTER 119

(H. B. 918—By Mr. Harman)

[Passed March 5, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and nine, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the number of elective members of the teachers retirement board; making the commissioner of finance and administration and the state treasurer members of the board; removing the director of

the budget; and making it possible for a majority of the members to call a meeting.

Be it enacted by the Legislature of West Virginia:

That sections five and nine, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-5. Members of retirement board; terms of office; vacancies.

§18-7A-9. Meetings of retirement board.

§18-7A-5. Members of retirement board; terms of office; vacancies.

1 The retirement board shall consist of the following nine
2 members: (a) The governor, who shall be ex officio chair-
3 man; (b) the state superintendent of free schools; (c) the
4 commissioner of finance and administration; (d) the state in-
5 surance commissioner; (e) the state treasurer; and (f) four
6 members of the retirement system.

7 The teachers, who are now serving as board members, shall
8 serve the terms for which they were elected by the members
9 of the retirement system. The new elective member shall be
10 elected for a four-year term. The election shall be held
11 prior to the first day of July, one thousand nine hundred
12 seventy-six, and the new elective member shall begin his
13 first term on that date; thereafter, all elections shall be for
14 six-year terms and all elective terms shall begin on the first day
15 of July. The manner and mode of such election shall be
16 determined by the retirement board.

17 Vacancies occurring in the terms of the elected membership
18 of the retirement board shall be filled within sixty days for
19 unexpired periods by the retirement board. If the retirement
20 board does not fill such vacancy within sixty days, the chairman
21 shall appoint a member of the retirement system to serve for
22 the remainder of the unexpired term.

23 Before exercising any authority or performing any duties
24 as a member of the retirement board, each member shall
25 qualify as such by taking and subscribing to the oath of
26 office prescribed by section five, article four of the constitu-
27 tion, the certificates whereof shall be filed with the secretary
28 of state.

§18-7A-9. Meetings of retirement board.

1 The retirement board shall hold meetings in the state
2 capitol at least four times during each school year.

3 Upon written request by at least a majority of the members
4 of the retirement board, the executive secretary shall call
5 a meeting of the retirement board to be held within thirty days
6 of such request.

CHAPTER 120

(S. B. 576—Originating in the Senate Committee on Education)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contributions by members to the state teachers retirement system.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**§18-7A-14. Contributions by members.**

1 At the end of each month every member of the retire-
2 ment system shall contribute six percent of his monthly
3 earnable compensation to the retirement board: *Provided,*
4 That in no case shall the contribution of any member
5 employed by the West Virginia board of regents at an
6 institution of higher education under its control exceed
7 two hundred eighty-eight dollars in any fiscal year.

8 Annually, the contributions of each member shall be
9 credited to his account in the teachers accumulation fund.
10 The contributions shall be deducted from the salaries of
11 the members as herein prescribed, and every member

12 shall be deemed to have given his consent to such deduc-
13 tions. No deductions, however, shall be made from the
14 earnable compensation of any teacher who retired because
15 of age or service, and then resumed service as a teacher.

16 The aggregate of employer contributions, due and pay-
17 able under this article, shall equal annually the total
18 deductions from the earnable compensation of members
19 required by this section. All employer contributions shall
20 be credited to the employers accumulation fund.

21 Payment by an employer to a member of the sum
22 specified in the employment contract minus the amount
23 of the employee's deductions shall be deemed to be a
24 full discharge of the employer's contractual obligation as
25 to earnable compensation.

26 Each contributor shall file with the retirement board
27 or with the employer to be forwarded to the retirement
28 board an enrollment form showing his date of birth and
29 other data needed by the retirement board. Upon notice
30 from the retirement board to the employer that a contrib-
31 utor has failed to file such forms as prescribed, the em-
32 ployer shall withhold the salary of the contributor until
33 the needed form is filed with the retirement board.

CHAPTER 121

(H. B. 1163—By Mr. Donley)

[Passed March 6, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state teachers retirement system; statement and computation of teacher's service; providing for service credit not exceeding two years for approved absence where a member or retired teacher is serving or has served as an officer with a statewide professional teaching association when the member or retired teacher pays double the amount of contribution for the time absent.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers' service.

1 Under such rules and regulations as the retirement board
2 may adopt, each teacher shall file a detailed statement of his
3 length of service as a teacher for which he claims credit.
4 The retirement board shall determine what part of a year is
5 the equivalent of a year of service. In computing such
6 service, however, it shall credit no period of more than a
7 month's duration during which a member was absent without
8 pay, nor shall it credit for more than one year service per-
9 formed in any calendar year.

10 For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other members of
12 the retirement system for service in any of the armed forces
13 of the United States in any period of national emergency
14 within which a federal selective service act was in effect. For
15 purposes of this section, "armed forces" shall include Women's
16 Army Corps, Women's Appointed Volunteers for Emergency
17 Service, Army Nurse Corps, Spars, Women's Reserve and
18 other similar units officially parts of the military service of the
19 United States. Such military service shall be deemed equivalent
20 to public school teaching, and the salary equivalent for each
21 year of such service shall be the actual salary of the member
22 as a teacher for his first year of teaching after discharge from
23 military service. Prior service credit for military service shall
24 not exceed ten years for any one member, nor shall it exceed
25 twenty-five percent of total service at the time of retirement.

26 For service as a teacher in the employment of the federal
27 government, or a state or territory of the United States, or a
28 governmental subdivision of such state or territory the re-
29 tirement board shall grant credit to the same extent and on the
30 same conditions, if any, as a retirement system established for
31 teachers in such employment would grant credit for service
32 as a teacher in the public schools of West Virginia.

33 No member shall be deemed absent from service as a teacher
34 while serving as a member of the Legislature of the state of
35 West Virginia during any duly constituted session of that body.

36 No member shall be deemed absent from service as a
37 teacher while serving on leave of absence as an officer with a
38 statewide professional teaching association, or who has served
39 in such capacity, and no retired teacher, who served on such
40 leave of absence while a member, shall be deemed to have been
41 absent from service as a teacher by reason of such service on
42 leave of absence: *Provided*, That the period of service credit
43 granted for such service on leave of absence shall not exceed
44 two years: *Provided, however*, That such member or retired
45 teacher who is serving or has served as an officer of a statewide
46 professional teaching association shall make deposits to the
47 teachers retirement board, for the time of any such absence, in
48 an amount double the amount which he would have con-
49 tributed in his regular assignment for a like period of time.

50 The teachers retirement board shall grant service credit to
51 any former or present member of the West Virginia public em-
52 ployees retirement system who have been contributing members
53 for more than three years, for service previously credited by the
54 public employees retirement system, and (1) shall require the
55 transfer of the member's contributions to the teachers retire-
56 ment system or (2) shall require a repayment of the amount
57 withdrawn any time prior to the member's retirement: *Pro-*
58 *vided*, That there shall be added by the member to the amounts
59 transferred or repaid under this paragraph an amount which
60 shall be sufficient to equal the contributions he would have
61 made had the member been under the teachers retirement
62 system during the period of his membership in the public
63 employees retirement system. Payments for absence as pro-
64 vided in section thirteen of this article, shall be paid in addition
65 to the above amount, if applicable.

66 If a member is not eligible for prior service credit or
67 pension as provided in this article, then his prior service
68 shall not be deemed a part of his total service.

69 A member who withdrew from membership shall be per-
70 mitted to regain his former membership rights as specified
71 in section thirteen of this article only in case he has served two
72 years since his last withdrawal.

73 Subject to the above provisions, the board shall verify
74 as soon as practicable, the statements of service submitted.
75 The retirement board shall issue prior service certificates
76 to all persons eligible therefor under the provisions of this
77 article. Such certificates shall state the length of such prior
78 service credit, but in no case shall the prior service credit
79 exceed forty years.

CHAPTER 122

(H. B. 1303—By Mr. Damron, 10th District, and Mr. Lewis)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-a, relating to authorization of school boards to approve attendance and pay expenses of auxiliary and service personnel while attending educational conventions, conferences or school service meetings or in visitation to another school system.

Be it enacted by the Legislature of West Virginia:

That section four, article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article five be further amended by adding thereto a new section, designated section four-a, all to read as follows:

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-4. Educational meetings.

§18A-5-4a. Educational or service meetings.

§18A-5-4. Educational meetings.

- 1 A county board of education may approve the attendance
- 2 of any or all teachers at educational conventions, conferences,
- 3 or other professional meetings of teachers on school days

4 when in the judgment of the superintendent it is necessary or
5 desirable. Attendance at such meetings may be substituted for
6 an equal amount of teaching or employment and teachers at-
7 tending shall not suffer loss of pay. Further, the board is
8 authorized to pay all or any part of expenses of any personnel
9 whom it may designate to represent the board at any such pro-
10 fessional or educational meetings or in visitation to another
11 school system.

§18A-5-4a. Educational or service meetings.

1 A county board of education may approve the attendance of
2 any or all auxiliary and service personnel at educational con-
3 ventions, conferences, or school service meetings of auxiliary
4 and service personnel on school days when in the judgment
5 of the superintendent it is necessary or desirable. Attendance
6 at such meetings may be substituted for an equal amount of
7 employment and auxiliary and service personnel so attending
8 shall not suffer loss of pay. Further, the board is authorized
9 to pay all or any part of expenses of any personnel whom it may
10 designate to represent the board at any such educational
11 conventions, conferences or school service meetings or in
12 visitation to another school system.

CHAPTER 123

(Com. Sub. for H. B. 1526—By Mr. Lohr and Mr. Harman)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section one, chapter two hundred five, acts of the Legislature, regular session, one thousand nine hundred seventy-five, relating to changing the dates between which the fifty million dollars of school buildings bonds may be issued and sold hereunder from subsequent to the first day of August, one thousand nine hundred seventy-five and during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-six, to subsequent to the first day of August,

one thousand nine hundred seventy-six and during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-seven.

Be it enacted by the Legislature of West Virginia:

That section one, chapter two hundred five, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be amended and reenacted to read as follows:

ISSUANCE AND SALE OF SCHOOL BUILDINGS BONDS.

§1. School buildings bonds; amount; when may issue.

1 Bonds of the state of West Virginia, under authority of the
2 better school buildings amendment of 1972, of the par value
3 not to exceed fifty million dollars during the fiscal year ending
4 the thirtieth day of June, one thousand nine hundred seventy-
5 seven, are hereby authorized to be issued and sold, at some date
6 subsequent to the first day of August, one thousand nine hun-
7 dred seventy-six, for the sole purpose of raising funds for dis-
8 tribution to county boards of education that qualify by meet-
9 ing conditions, qualifications and requirements as are pre-
10 scribed by general law and used and appropriated by such
11 county boards of education solely for the construction, reno-
12 vation or remodeling of elementary or secondary public school
13 buildings or facilities, the equipping of the same in connection
14 with any such construction, renovation or remodeling, and the
15 acquisition and preparation of sites for elementary or second-
16 ary public school buildings or facilities. Such bonds may be
17 issued by the governor in such amounts, in coupon or registered
18 form, in such denominations, at such time, after the first day of
19 August, one thousand nine hundred seventy-six, bearing such
20 date or dates, as the governor may determine, based upon an
21 examination of the needs of the various county boards of edu-
22 cation which justify the issuance by the governor of said bonds,
23 and shall become due and payable serially, annually or semi-
24 annually, in such amounts and mature in such years as the
25 governor may determine. Such bonds shall mature within and
26 not exceeding twenty-five years from their date. The governor
27 must offer said bonds for competitive bids from recognized
28 financial investment institutions before said bonds may be sold.

CHAPTER 124

(H. B. 1447—By Mr. Lewis)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the five thousand dollar assessed value exemption on real estate for persons over sixty-five years of age; requiring registration only once for such exemption.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-21. Five thousand dollar assessed value exemption for persons over sixty-five and otherwise qualified; ascertainment of eligibility; supplying of instructions and forms and promulgation of regulations.

1 Beginning with the first day of July, one thousand nine
2 hundred seventy-four, and every July first thereafter the as-
3 sessor shall ascertain each person in his county who owns real
4 property, wholly or partially, including, but not limited to, a
5 person who owns a life estate or a consummate dower interest
6 therein, and who occupies such real property as his primary res-
7 idence and who is sixty-five years of age or older. An exemp-
8 tion from ad valorem tax of the first five thousand dollars of
9 assessed valuation of all such property is hereby granted when
10 owned and occupied by any such qualified person.

11 The exemption of the first five thousand dollars shall be
12 shown on the land book against the total assessed value, and

13 taxes shall be extended against the net amount of the assessed
14 value for the calendar tax year one thousand nine hundred
15 seventy-five and every calendar tax year thereafter in which
16 the owner and the property remains qualified under this sec-
17 tion. Only one exemption shall be granted for each owner-
18 occupied residence regardless of the number of qualified per-
19 sons, sixty-five or older, residing therein.

20 When the five thousand dollar exemption is greater than
21 the total assessed value of the residence, no taxes will be levied;
22 and the sheriff shall issue a statement to the landowner show-
23 ing that no taxes are due.

24 Only those homeowners sixty-five years of age or older
25 on the July first assessment date will be eligible for the exemp-
26 tion provided by this section for the following calendar tax
27 year. The exemption shall attach to the real estate occupied by
28 the qualified homeowner on the July first assessment date. An
29 exemption shall not be transferred to another parcel of real
30 estate until the following July first. If the property of a home-
31 owner qualified under this section is transferred by deed, will
32 or otherwise to an owner who will not be at least sixty-five
33 years of age on the next July first assessment date, the five
34 thousand dollar exemption will be removed from the property
35 when next assessed.

36 In addition to the listing made by the assessor, every home-
37 owner who is qualified shall have the right to appear before
38 the assessor and register his right to the exemption provided by
39 this section. Any person who does not appear before the as-
40 sessor, by himself or his personal representative, or who
41 does not in any way contact the assessor's office to register his
42 right to an exemption on or before the first day of October
43 following a July first assessment day, shall not be entitled to
44 any exemption for the following calendar tax year. A person
45 need only register his right to an exemption one time for any
46 qualified real estate.

47 The tax commissioner shall prescribe and supply all neces-
48 sary instructions and forms and shall promulgate all necessary
49 regulations to effectuate the purpose of this section.

CHAPTER 125

(H. B. 1044—By Mr. Speaker, Mr. McManus, and Mrs. Given)

[Passed March 11, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact sections one, four and eleven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article eleven by adding thereto a new section, designated section twenty-eight, all relating to inheritance and transfer taxes; providing for taxation of a transfer of an estate in property coupled with a general or limited power of appointment; providing for taxation of a transfer by the exercise or nonexercise of a general power of appointment; providing for exemption of annuity or other payments receivable by beneficiaries from decedents under pension and similar type plans, contracts or policies; providing for increasing the amount of exemptions from tax of property transferred to certain specified transferees; providing for accelerating payment and collection of tax; imposing an additional tax on the transfer of property of resident decedents to equal the maximum allowable federal estate tax credit available to an estate under the estate tax imposed by the revenue laws of the United States; and specifying certain effective dates.

Be it enacted by the Legislature of West Virginia:

That sections one, four and eleven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article eleven be further amended by adding thereto a new section, designated section twenty-eight, all to read as follows:

ARTICLE 11. INHERITANCE AND TRANSFER TAXES.

- §11-11-1. When imposed.
- §11-11-4. Exemptions.
- §11-11-11. Payments and collection.
- §11-11-28. Additional tax imposed.

§11-11-1. When imposed.

- 1 A tax, payable into the treasury of the state, shall be
- 2 imposed upon the transfer, in trust, or otherwise, of any

3 property, or interest therein, real, personal, or mixed, if
4 such transfer be:

5 (a) By will or by laws of this state regulating descent and
6 distribution from any person who is a resident of the state at the
7 time of his death and who shall die seized or possessed of
8 property.

9 (b) By will or by laws regulating descent and distribution of
10 property within the state, or within its taxing jurisdiction, and
11 the decedent was a nonresident of the state at the time of his
12 death.

13 (c) By a resident, or by a nonresident owning taxable
14 property within the state or within its jurisdiction, by deed,
15 grant, sale or gifts, made in contemplation of the death of the
16 grantor, vendor or donor, or intended to take effect in posses-
17 sion or enjoyment at or after such death, or where any change
18 in the use or enjoyment of property included in such transfer,
19 or the income thereof, may occur in the lifetime of the grantor,
20 vendor or donor, by reason of any power reserved to, or con-
21 ferred upon, the grantor, vendor or donor, either solely or in
22 conjunction with any person or persons, to alter, or to amend,
23 or to revoke any transfer, or any portion thereof, as to
24 the portion remaining at the time of death of the grantor,
25 vendor or donor, thus subject to alteration, amendment
26 or revocation. If any one of the transfers mentioned in
27 this subdivision is made for valuable consideration, the portion
28 of the transfer for which the grantor, or vendor receives equiv-
29 alent monetary value is not taxable, but the remaining portion
30 thereof is taxable. Every transfer by deed, grant, sale or gift,
31 made within three years prior to the death of the grantor, ven-
32 dor or donor, without adequate valuable consideration, shall be
33 presumed to have been made in the contemplation of death
34 within the meaning of this subdivision.

35 (d) By any person who shall transfer any property which
36 he owns, or shall cause any property to which he is absolutely
37 entitled to be transferred to or vested in himself and any other
38 person jointly, with the right of survivorship, in whole or in
39 part, in such other person, a transfer shall be deemed to occur
40 and to be taxable under the provisions of this article upon the
41 vesting of such title in the survivor: *Provided*, That this sub-

42 division shall not apply to bank accounts and to shares or
43 savings accounts in federal savings and loan associations or-
44 ganized under the federal home owners' loan act of one thou-
45 sand nine hundred thirty-three, as amended, or in building and
46 loan associations organized under article six, chapter thirty-one
47 of this code, payable to the class designated in clause (a),
48 section two of this article in a total amount of twenty-five
49 hundred dollars or less: *Provided, however,* That in the case
50 of a surviving spouse, not more than fifty per centum of the
51 value of any transfer mentioned in this subdivision (d) shall
52 be included and taxed in any such decedent's estate.

53 (e) To any person deriving an estate in property coupled
54 with a general or limited power of appointment.

55 (1) *General power.*—Any transfer involving the creation
56 of a general power of appointment shall be treated as trans-
57 ferring to the donee of the power a fee or equivalent interest
58 in the property which is subject to the power.

59 (2) *Limited power.*—Any transfer involving the creation
60 of any other power of appointment shall be treated as trans-
61 ferring to the donee of the power a life estate or term of years in
62 the property which is subject to the power and as transferring
63 remainder or reversionary interests therein to those who
64 would take if the power is not exercised. The portion of tax
65 which is imposed on any person entitled in remainder or
66 reversion shall be payable in the same manner, and within the
67 same time, as if such person's interest had vested in pos-
68 session. Unless otherwise provided by the decedent, the
69 tax on such temporary interests and on such remainder
70 or reversionary interests shall be payable out of the corpus
71 of the property which is subject to the power.

72 (f) By the exercise or nonexercise of a general power of
73 appointment.

74 (1) *Power that remains unexercised at time of death.*—
75 If at the time of his death a decedent has a general power of
76 appointment with respect to property, the exercise of that power
77 is subject to tax as a transfer of the property from the decedent
78 to the person to whom the property is appointed. The failure of
79 the decedent to exercise a general power of appointment is
80 subject to tax as a transfer of the property from the decedent

81 to the person to whom the property passes by virtue of the non-
82 exercise of the power. For purposes of this paragraph the
83 power of appointment shall be considered to exist on the date
84 of the decedent's death even though the exercise of that power
85 is subject to a precedent giving of notice or even though the
86 exercise of the power takes effect only on the expiration of a
87 stated period after its exercise, whether or not on or before the
88 date of the decedent's death, notice has been given or the power
89 has been exercised.

90 (2) *Exercise or release by decedent of power during his*
91 *lifetime.*—The exercise or release by the decedent during his
92 lifetime of a general power of appointment is a transfer subject
93 to tax if the exercise or release is of such a nature that if it were
94 a transfer of property owned by the decedent, such transfer
95 would be subject to tax under this article. A disclaimer or
96 renunciation of such a power of appointment shall not be
97 deemed a release of such power.

98 (3) *Definition.*—For purposes of subdivisions (e) and
99 (f), the term “general power of appointment” and the term
100 “lapse of power” shall have the same meaning as when used in
101 section 2041 of the Internal Revenue Code.

102 (g) By the terms of any annuity or investment contracts,
103 or similar type or form of contract or policy, and shall be on
104 the amount payable under any such contract or policy, on
105 account of a death, to named beneficiaries, to his estate or in
106 trust for the benefit of any individual or individuals, in-
107 cluding (1) all such policies or contracts hereafter issued,
108 and (2) all such policies or contracts now in force: *Pro-*
109 *vided,* That there shall be exempt from the provisions of this
110 subdivision the proceeds of such contracts or policies:

111 (i) When the premiums on such policies or contracts were
112 paid by the beneficiary named in such policy or contract, to
113 the extent only of the ratio of premiums paid by the bene-
114 ficiary bear to the total premiums paid;

115 (ii) When the proceeds of such policies or contracts
116 have been assigned by the decedent for a valuable consideration
117 either in form absolute or as collateral security for the
118 payment of a bona fide indebtedness of the decedent, to the
119 extent that the proceeds thereof shall be necessary to pay

120 and satisfy such indebtedness: *Provided, however,* That no
121 annuity settlement or arrangement accepted in lieu of cash
122 settlement of a life insurance policy, whereby the proceeds
123 of such policy are payable in installments, shall be subject
124 to taxation under the provisions of this article, nor shall
125 the provisions of this article apply to the proceeds of any
126 policy of life or accident insurance payable to a named bene-
127 ficiary or beneficiaries whether directly or in trust or other-
128 wise.

129 Where annuity or investment contracts or policies are
130 left by a decedent in such manner that the proceeds thereof
131 cannot be subjected to the payment of his debts, and where
132 the proceeds of such annuity or investment contracts are
133 received by beneficiaries thereof, the fact that the decedent
134 may have been insolvent and that a portion of his debts may
135 remain unpaid shall not affect the liability for inheritance
136 tax on such proceeds.

137 Notwithstanding anything contained herein to the contrary,
138 there shall be exempt from tax hereunder the proceeds of an
139 annuity or other payment, whether attributable to employer
140 contribution, employee contribution or otherwise, receivable by
141 any beneficiary under:

142 (1) An employees' trust (or under a contract purchased
143 by an employees' trust) forming part of a pension, stock bonus,
144 or profit-sharing plan, including self-employed plans, which,
145 at the time of the decedent's separation from employment
146 (whether by death or otherwise), or at the time of termination
147 of the plan if earlier, met the requirements of section 401(a)
148 of the Internal Revenue Code;

149 (2) A retirement annuity contract purchased by an em-
150 ployer (and not by an employees' trust) pursuant to a plan
151 which, at the time of decedent's separation from employment
152 (by death or otherwise), or at the time of termination of the
153 plan if earlier, was a plan described in section 403(a) of the
154 Internal Revenue Code;

155 (3) A retirement annuity contract purchased for an em-
156 ployee by an employer which is an organization referred to in
157 section 170(b)(1)(A)(ii) or (vi) of the Internal Revenue
158 Code, or which is a religious organization (other than a trust),

159 and which is exempt from tax under section 501(a) of the
160 Internal Revenue Code;

161 (4) Annuity under the Retired Serviceman's Family Pro-
162 tection Plan or Survivor Benefit Plan pursuant to chapter 73
163 of Title 10 of the United States Code;

164 (5) A retirement savings plan for which a deduction has
165 been allowed under section 219 of the Internal Revenue Code.

166 All references to the Internal Revenue Code shall be to
167 the Internal Revenue Code of 1954, as amended, as in effect
168 on the first day of January, one thousand nine hundred seventy-
169 six. All references to the United States Code shall be to the
170 United States Code in effect on the first day of January, one
171 thousand nine hundred seventy-six.

§11-11-4. Exemptions.

1 (a) All property transferred to the state or to any county,
2 school district, or municipal corporation thereof, for public
3 purposes, shall be exempt from taxation under this article.

4 (b) No transfer of two hundred dollars, or less, shall be
5 taxable under this article. For this purpose, all transfers from a
6 decedent to the same transferee shall be treated as a unit.

7 (c) In computing the tax upon property transferred to a
8 widow, or a widower of a deceased person, an exemption of
9 thirty thousand dollars shall be allowed.

10 (d) In computing the tax upon property transferred to the
11 father, mother, child or stepchild of the decedent, there shall
12 be allowed an exemption of ten thousand dollars; from proper-
13 ty transferred to a grandchild of the decedent there shall be
14 allowed an exemption of five thousand dollars.

15 (e) In computing the tax upon property transferred to the
16 brother, sister, half brother or half sister of the decedent, if
17 at the time of death the decedent was unmarried, there shall
18 be allowed an exemption of ten thousand dollars.

19 (f) There shall be exempt from taxation under this article,
20 all property transferred to a person or corporation, foreign or
21 domestic, in trust or for the use solely for educational, literary,
22 scientific, religious or charitable purposes: *Provided*, That the

23 property so transferred to the person resident of another
24 state or to a foreign corporation, in trust or for the purposes
25 herein mentioned, shall be exempt only so far as the laws of the
26 state where such person or foreign corporation is domiciled
27 would exempt like property transferred from that state to
28 a person or corporation in this state in trust and for similar
29 purposes.

30 The provisions of this subsection as hereby amended shall
31 apply to all future devises, bequests and gifts for such pur-
32 poses, and shall be retroactive in applying to all past devises,
33 bequests and gifts for such purposes, where the final payment
34 of transfer or inheritance taxes has not been made to the
35 state of West Virginia.

§11-11-11. Payments and collection.

1 All taxes imposed by this article shall be due and payable at
2 the death of the transferor and if paid within ten months after
3 the death of the transferor a discount of three percent shall
4 be allowed and deducted. If not paid within eleven months
5 after the death of the transferor taxes due under this article
6 shall bear interest at the rate of ten per centum per annum, to
7 be computed from the expiration of eleven months from the
8 date of the death of the transferor until paid, and a penalty of
9 five percent shall be added. The tax commissioner may suspend
10 payment of such taxes, penalties and interest if there be neces-
11 sary litigation pending at the time such taxes are due and pay-
12 able, which involves the estate, or for other good and suffi-
13 cient cause. Suits and actions brought for the purpose of de-
14 feating the payment of any such taxes, penalties and interest
15 shall not be deemed necessary litigation within the meaning of
16 this section.

17 The provisions of this section as hereby amended shall ap-
18 ply to the estates of all decedents dying on or after the first
19 day of July, one thousand nine hundred seventy-six and the
20 provisions of this section eleven, article eleven, chapter eleven
21 of the code of West Virginia, one thousand nine hundred
22 thirty-one, as amended, in effect prior to the enactment here-
23 of shall apply to the estates of all decedents dying before said
24 date.

§11-11-28. Additional tax imposed.

1 (a) *Imposition of Tax.*—A tax in addition to that imposed
2 by section one of this article is hereby imposed upon the
3 transfer of property of every person who, after the effective
4 date of this section, shall die a resident of this state, the
5 amount of which shall be a sum equal to the excess (if any)
6 of:

7 (1) The maximum amount of the credit, allowable under
8 the applicable revenue laws of the United States imposing
9 an estate tax, for estate, inheritance, legacy and succession
10 taxes paid to the several states of the United States, over

11 (2) The total amount of all constitutionally valid estate,
12 inheritance, legacy and succession taxes actually paid to the
13 several states of the United States (other than this state)
14 and paid to this state under section one of this article. The
15 purpose of this section is to secure for the state of West Vir-
16 ginia the maximum benefit in all cases of the credit allowed
17 under the provisions of the estate tax imposed by the revenue
18 laws of the United States, to the extent that this state may
19 be entitled thereto, and this section shall be liberally con-
20 strued to effect such purpose.

21 (b) *Apportionment of tax.*—The tax imposed by this
22 section shall be apportioned and paid in the same manner
23 as the federal estate tax is apportioned and paid pur-
24 suant to the provisions of section sixteen-a, article two,
25 chapter forty-four of the code of West Virginia, one thou-
26 sand nine hundred thirty-one, as amended. The provi-
27 sions of said section sixteen-a shall in all respects apply
28 to the apportionment and payment of the tax imposed
29 by this section, and those persons paying the tax im-
30 posed by this section shall have all the rights in respect
31 to the tax imposed by this section which are accorded by
32 said section sixteen-a to those persons paying the federal
33 estate tax. Said section sixteen-a shall be construed in all
34 respects to apply as fully to the tax imposed by this section
35 as if said sixteen-a specifically referred to and included the
36 tax imposed by this section.

37 (c) *Administration.*—The tax imposed by this section
38 shall be paid in full by the personal representative, regard-

39 less of whether or not the property transferred is subject
40 to his control. In no event, however, shall the personal
41 liability of the personal representative exceed the assets
42 of the estate coming within his control. If there is no
43 personal representative appointed, qualified and acting with-
44 in the state, then any person in actual or constructive pos-
45 session of any property includable in the gross estate of
46 the decedent shall be liable for the tax imposed by this
47 section to the extent of the value of such property at the
48 date of the decedent's death. The term "gross estate" as
49 used herein shall include all property subject to the estate
50 tax imposed under the revenue laws of the United States.

51 (d) *Effective date.*—The provisions of this section shall
52 apply to the transfer of the estate of every decedent who shall
53 die a resident of this state on or after the first day of July, one
54 thousand nine hundred seventy-six.

CHAPTER 126

(H. B. 1088—By Mr. Burke)

[Passed May 15, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-I, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax and imposing an additional tax upon the business of severing, extracting, reducing to possession and producing for sale any coal; providing the rate of tax and measure thereof; providing that such additional tax is imposed pursuant to the provisions of section six-a, article ten of the West Virginia constitution; providing for distribution of such additional tax to entitled counties and municipalities; providing for reporting and remittance as elsewhere in said article thirteen; providing for promulgation of rules and regulations; creating funds in the office of state treasurer; providing for deposit into and distribution from such funds; providing for transfer from separate account into "all counties and municipalities

revenue fund"; specifying formulas for determining amounts to which counties and municipalities are entitled; creating special funds and expenditure limitations for moneys distributed to counties and municipalities; providing for special budgets for such counties and municipalities and reports thereon by state tax commissioner, and authorizing the state tax commissioner to retain a certain amount of the tax as a fee for administration and distribution.

Be it enacted by the Legislature of West Virginia:

That section two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2l. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports, rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

1 (a) Upon every person exercising the privilege of engaging
2 or continuing within this state in the business of severing, ex-
3 tracting, reducing to possession and producing for sale, profit
4 or commercial use any coal, the amount of such tax to be
5 equal to the value of the coal produced as shown by the gross
6 proceeds derived from the sale thereof by the producer, mul-
7 tiplied by thirty-five one hundredths of one percent, and the
8 tax imposed by section two of this article in conjunction with
9 this subsection (a) shall be in addition to the tax imposed
10 by said section two in conjunction with section two-a of this
11 article, and the tax imposed by section two of this article in
12 conjunction with this subsection (a) is hereinafter in this

13 section referred to as "such additional tax." The measure of
14 such additional tax is the value of the entire production in
15 this state, regardless of the place of sale or the fact that the
16 delivery may be made to points outside the state.

17 (b) Such additional tax is imposed pursuant to the pro-
18 visions of section six-a, article ten of the West Virginia con-
19 stitution. Seventy-five percent of the net proceeds of such
20 additional tax shall, after appropriation thereof by the Legisla-
21 ture, be distributed by the state treasurer to the various
22 counties in this state in which the coal upon which such
23 additional tax is imposed was located at the time it was
24 severed from the ground, such counties being hereinafter in
25 this section referred to as the "coal-producing counties,"
26 and the remaining twenty-five percent of the net proceeds
27 of such additional tax shall be distributed, after appropriation,
28 among all the counties and municipalities of this state without
29 regard to coal having been produced therein.

30 (c) Such additional tax shall be due and payable, re-
31 ported and remitted as elsewhere provided in this article for
32 the tax imposed by said section two in conjunction with
33 said section two-a of this article and all of the enforcement
34 and other provisions of this article shall apply to such
35 additional tax. In addition to the reports and other informa-
36 tion required under the provisions of this article and the
37 tonnage reports required to be filed under the provisions of
38 section seventy-two, article two, chapter twenty-two of this
39 code, the state tax commissioner is hereby granted plenary
40 power and authority to promulgate reasonable rules and
41 regulations requiring the furnishing by producers of such
42 additional information as may be necessary to compute the
43 allocation required under the provisions of subsection (f)
44 of this section. The state tax commissioner is also hereby
45 granted plenary power and authority to promulgate such
46 other reasonable rules and regulations as may be necessary
47 to implement the provisions of this section.

48 (d) In order to provide a procedure for the distribution
49 of seventy-five percent of the net proceeds of such additional
50 tax to such coal-producing counties, there is hereby created
51 in the state treasurer's office a special fund to be known as
52 the "county coal revenue fund", and in order to provide

53 a procedure for the distribution of the remaining twenty-five
54 percent of the net proceeds of such additional tax to all
55 counties and municipalities of the state, without regard to
56 coal having been produced therein, there is also hereby
57 created in the state treasurer's office a special fund to be
58 known as the "all counties and municipalities revenue
59 fund."

60 Seventy-five percent of the net proceeds of such additional
61 tax shall be deposited in the "county coal revenue fund"
62 and twenty-five percent of such net proceeds shall be deposited
63 in the "all counties and municipalities revenue fund," from
64 time to time as such proceeds are received by the state tax
65 commissioner. The moneys in such funds shall, after ap-
66 propriation thereof by the Legislature, be distributed to the
67 respective counties and municipalities entitled thereto in the
68 manner set forth in subsection (e) of this section: *Provided,*
69 That those moneys heretofore received and maintained in a
70 separate account in the state treasurer's office, constituting
71 twenty-five percent of the net proceeds of such additional
72 tax received prior to the creation of the "all counties and
73 municipalities revenue fund" shall be transferred to such fund
74 and promptly distributed from such fund to all counties and
75 municipalities of this state according to their respective entitle-
76 ment.

77 (e) The moneys in the "county coal revenue fund" and the
78 moneys in the "all counties and municipalities revenue fund"
79 shall be allocated among and distributed quarterly to the
80 counties and municipalities entitled thereto by the state trea-
81 surer in the manner hereinafter specified. On or before
82 each distribution date, the state treasurer shall determine
83 the total amount of moneys in each fund which will be available
84 for distribution to the respective counties and municipalities
85 entitled thereto on that distribution date. The amount to
86 which a coal-producing county is entitled from the "county
87 coal revenue fund" shall be determined in accordance with
88 subsection (f) of this section, and the amount to which every
89 county and municipality shall be entitled from the "all
90 counties and municipalities revenue fund" shall be deter-
91 mined in accordance with subsection (g) of this section.
92 After determining as set forth in subsection (f) and sub-

93 section (g) of this section the amount each county and munic-
94 ipality is entitled to receive from the respective fund or funds,
95 a warrant of the state auditor for the sum due to such county
96 or municipality shall issue and a check drawn thereon making
97 payment of such sum shall thereafter be distributed to such
98 county or municipality.

99 (f) The amount to which a coal-producing county is en-
100 titled from the "county coal revenue fund" shall be deter-
101 mined by (i) dividing the total amount of moneys in such
102 fund then available for distribution by the total number
103 of tons of coal mined in this state during the preceding
104 quarter, and (ii) multiplying the quotient thus obtained by
105 the number of tons of coal removed from the ground in such
106 county during the preceding quarter.

107 (g) The amount to which each county and municipality shall
108 be entitled from the "all counties and municipalities revenue
109 fund" shall be determined in accordance with the provisions of
110 this subsection. For purposes of this subsection, "population"
111 shall mean the population as determined by the most recent
112 decennial census taken under the authority of the United States.

113 The treasurer shall first apportion the total amount of
114 moneys available in the "all counties and municipalities revenue
115 fund" by multiplying the total amount in such fund by the
116 percentage which the population of each county bears to the
117 total population of the state. The amount thus apportioned
118 for each county shall be the county's "base share."

119 Each county's "base share" shall then be subdivided into
120 two portions. One portion shall be determined by multiplying
121 the "base share" by that percentage which the total population
122 of all unincorporated areas within the county bears to the
123 total population of the county, and the other portion shall
124 be determined by multiplying the "base share" by that
125 percentage which the total population of all municipalities
126 within the county bears to the total population of the county.
127 The former portion shall be paid to the county and the latter
128 portion shall be the "municipalities' portion" of the county's
129 "base share." The percentage of such latter portion to which
130 each municipality in the county is entitled shall be determined
131 by multiplying the total of such latter portion by the percentage

132 which the population of each municipality within the county
133 bears to the total population of all municipalities within
134 the county.

135 (h) All counties and municipalities shall create a "coal
136 severance tax revenue fund" which shall be the depository for
137 moneys distributed to any county or municipality under the
138 provisions of this section, from either or both special funds.
139 Moneys in such "coal severance tax revenue funds," in com-
140 pliance with subsection (i), may be expended by the county
141 commission or governing body of the municipality for such
142 public purposes as the county commission or governing body
143 shall determine to be in the best interest of the people of its
144 respective county or municipality: *Provided*, That a line item
145 budgeted amount from the current levy estimate for a county
146 shall be funded at one hundred percent of the preceding year's
147 expenditure from the county general fund prior to the use of
148 coal severance tax revenue fund moneys for the same general
149 purpose: *Provided, however*, That said coal severance tax
150 revenue fund moneys shall not be budgeted for personal
151 services in an amount to exceed one fourth of the total funds
152 available in such fund.

153 (i) On or before July fifteenth, one thousand nine hundred
154 seventy-six, each county commission or governing body of a
155 municipality receiving such revenue funds for fiscal year one
156 thousand nine hundred seventy-six—one thousand nine hun-
157 dred seventy-seven, shall budget the intended use of such funds
158 on forms provided by the state tax commissioner. Such budget
159 shall be followed unless the state tax commissioner approves
160 a subsequent amendment. On or before June fifteenth, one
161 thousand nine hundred seventy-seven, and each June fifteenth
162 thereafter, each county commission or governing body re-
163 ceiving such revenue shall submit to the state tax commissioner
164 on forms provided by the state tax commissioner a special
165 budget, detailing how such revenue is to be spent during the
166 subsequent fiscal year. Such budget shall be followed in
167 expending such revenue unless a subsequent budget is approved
168 by the state tax commissioner. All unexpended balances re-
169 maining in said special fund at the close of a fiscal year shall
170 be reappropriated to the budget for the subsequent fiscal year.
171 Such reappropriation shall be entered as an amendment to the

172 new budget and submitted to the tax commissioner on or be-
173 fore July fifteenth of the current budget year.

174 (j) On or before December fifteenth, one thousand nine
175 hundred seventy-six, and each December fifteenth thereafter,
176 the state tax commissioner shall deliver to the clerk of the
177 Senate and the clerk of the House of Delegates a consolidated
178 report of the special budgets, created by subsection (i) of this
179 section, for all county commissions and municipalities as of July
180 fifteenth of the current year.

181 (k) The state tax commisioner shall retain for the benefit
182 of the state from the additional tax collected the amount of
183 thirty-five thousand dollars annually as a fee for the ad-
184 ministration of such additional tax by the state tax commis-
185 sioner and the distribution of the net proceeds thereof by the
186 state treasurer.

CHAPTER 127

(H. B. 763—By Mr. Smith and Mr. Childers)

[Passed March 2, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the refund of tax paid on fuel because of certain nonhighway uses; time for filing of application for refund of tax paid on gasoline used for agricultural purposes; and to further amend said article by adding thereto a new section, designated section eleven-a, relating to the refund of tax paid on fuel used by volunteer fire departments, nonprofit ambulance services and emergency rescue services; time for filing of application for refund; and certification by county commission to state tax commissioner that organization is a bona fide nonprofit organization.

Be it enacted by the Legislature of West Virginia:

That section eleven, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eleven-a, all to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-11. Refund of tax because of certain nonhighway uses.

§11-14-11a. Refund of tax used by volunteer fire departments, nonprofit ambulance services and emergency rescue services.

§11-14-11. Refund of tax because of certain nonhighway uses.

1 The tax imposed by this article shall be refunded to any
2 person who shall buy in quantities of twenty-five gallons or
3 more, at any one time, tax-paid gasoline or special fuel, when
4 consumed for the following purposes:

5 (1) As a special fuel for internal combustion engines not
6 operated upon highways of this state, or

7 (2) Gasoline consumed to operate tractors and gas engines
8 or threshing machines for agricultural purposes, when such
9 operation is not, in whole or in part, upon the highways of
10 this state, or

11 (3) Gasoline used by any railway company, subject to
12 regulation by the public service commission of West Virginia,
13 for any purpose other than upon the highways of this state,
14 or

15 (4) Gasoline consumed in the business of manufacturing
16 or producing natural resources or in mining or drilling
17 therefor, or in the transportation of natural resources solely
18 by means of unlicensed vehicles or vehicles licensed under
19 the motor vehicle laws of this state, either as a motor fuel or
20 for any other purpose and which gasoline is not in any part
21 used upon the highways of this state, or

22 (5) Gasoline consumed in motor boats or other water-
23 craft operated upon the navigable waters of this state.

24 Such tax shall be refunded upon presentation to the com-
25 missioner of an affidavit accompanied by the original or top
26 copy sales slips or invoices, or certified copies thereof, from
27 the distributor or producer or retail dealer, showing such
28 purchases, together with evidence of payment thereof, which
29 affidavit shall set forth the total amount of such gasoline or

30 special fuel purchased and consumed by such user, other than
31 upon any highways of this state, and how used; and the
32 commissioner upon the receipt of such affidavit and such
33 paid sales slips or invoices shall cause to be refunded such
34 tax paid on gasoline or special fuel purchased and consumed
35 as aforesaid.

36 The right to receive any refund under the provisions of
37 this section shall not be assignable and any assignment
38 thereof shall be void and of no effect, nor shall any pay-
39 ment be made to any person other than the original person
40 entitled thereto using gasoline or special fuel as hereinbefore
41 in this section set forth. The commissioner shall cause
42 a refund to be made under the authority of this section only
43 when the application for such refund is filed with the com-
44 missioner, upon forms prescribed by the commissioner, within
45 four months from the month of purchase or delivery of the
46 gasoline or special fuel, except that any application for refund
47 made under authority of subdivision (2) above shall be filed
48 within twelve months from the month of purchase or delivery
49 of such gasoline or special fuel. Any claim for a refund not
50 timely filed shall not be construed to be or constitute a moral
51 obligation of the state of West Virginia for payment.

**§11-14-11a. Refund of tax used by volunteer fire departments,
nonprofit ambulance services and emergency rescue
services.**

1 Upon certification by the county commission to the state tax
2 commissioner that an organization in the county is a bona fide
3 volunteer fire department, nonprofit ambulance service or
4 emergency rescue service, the tax imposed by this article and
5 paid by such organization shall be refunded.

6 Such tax shall be refunded upon presentation to the com-
7 missioner of an affidavit accompanied by the original or top
8 copy sales slips or invoices, or certified copies thereof, from
9 the distributor or producer or retail dealer, showing such
10 purchases, together with evidence of payment thereof, which
11 affidavit shall set forth the total amount of such gasoline or
12 special fuel purchased and consumed by such user, and the
13 commissioner upon the receipt of such affidavit and such paid
14 sales slips or invoices shall cause to be refunded such tax

15 paid on gasoline or special fuel purchased and consumed as
16 aforesaid.

17 The right to receive any refund under the provisions of this
18 section shall not be assignable and any assignment thereof shall
19 be void and of no effect, nor shall any payment be made to any
20 person other than the original person entitled thereto using
21 gasoline or special fuel as hereinbefore in this section set forth.
22 The commissioner shall cause a refund to be made under the
23 authority of this section only when the application for such
24 refund is filed with the commissioner, upon forms prescribed
25 by the commissioner, no later than the thirty-first day of
26 August for purchases of fuel made during the preceding fiscal
27 year ending the thirtieth day of June. Any claim for a refund
28 not timely filed shall not be construed to be or constitute a
29 moral obligation of the state of West Virginia for payment.

CHAPTER 128

(S. B. 429—By Mr. Hatfield and Miss Herndon)

[Passed March 4, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to soft drinks tax, providing definitions for "natural undiluted fruit juice," "natural undiluted vegetable juice" or "sweetener."

Be it enacted by the Legislature of West Virginia:

That section one, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 19. SOFT DRINKS TAX.

§11-19-1. Definitions.

1 As used in this article:

2 (1) "Bottled soft drinks" shall include any and all

3 nonalcoholic beverages, whether carbonated or not, such
4 as soda water, ginger ale, coca cola, lime cola, pepsi
5 cola, doctor pepper, root beer, carbonated water, orange-
6 ade, lemonade, fruit juice when any plain or carbonated
7 water, flavoring or syrup is added, or any and all prep-
8 arations commonly referred to as "soft drinks" of what-
9 ever kind, which are closed and sealed in glass, paper,
10 or any other type of container, envelope, package or
11 bottle, whether manufactured with or without the use
12 of any syrup. The term "bottled soft drinks" shall not
13 include fluid milk to which no flavoring has been added,
14 or natural undiluted fruit juice or vegetable juice.

15 (2) "Natural undiluted fruit juice" shall mean the liquid
16 resulting from the pressing of fruit with or without
17 sweetener being added, or the liquid resulting from the
18 reconstitution of natural fruit juice concentrate by the
19 restoration of water to dehydrated natural fruit juice
20 with or without sweetener being added.

21 (3) "Natural undiluted vegetable juice" shall mean
22 the liquid resulting from the pressing of vegetables with or
23 without sweetener being added or the liquid resulting
24 from the reconstitution of natural vegetable juice con-
25 centrate by the restoration of water to dehydrated natural
26 vegetable juice with or without sweetener being added.

27 (4) "Sweetener" shall mean sugar only, artificial or
28 natural, which singularly flavors the taste of a natural
29 undiluted fruit juice or natural undiluted vegetable juice.

30 (5) "Soft drink syrups and powders" shall include
31 the compound mixture or the basic ingredients, whether
32 dry or liquid, practically and commercially usable in
33 making, mixing or compounding soft drinks by the mixing
34 thereof with carbonated or plain water, ice, fruit, milk
35 or any other product suitable to make a soft drink, among
36 such syrups being such products as coca cola syrup, chero
37 cola syrup, pepsi cola syrup, doctor pepper syrup,
38 root beer syrup, nu-grape syrup, lemon syrup, vanilla
39 syrup, chocolate syrup, cherry smash syrup, rock candy
40 syrup, simple syrup, chocolate drink powder, malt drink
41 powder, or any other prepared syrups or powders sold or

42 used for the purpose of mixing soft drinks commercially
43 at soda fountains, restaurants or similar places as well as
44 those powder bases prepared for the purpose of domesti-
45 cally mixing soft drinks such as kool aid, oh boy drink,
46 tip top, miracle aid and all other similar products.

47 (6) "Simple syrup" shall mean the making, mixing,
48 compounding or manufacturing, by dissolving sugar and
49 water or any other mixtures that will create simple
50 syrup to which may or may not be added concentrates or
51 extracts.

52 (7) "Person" shall mean and include an individual,
53 firm, partnership, association or corporation.

54 (8) "Wholesale dealer" includes only those persons
55 who sell any bottled soft drink or soft drink syrup to
56 retail dealers for the purpose of resale.

57 (9) "Retail dealer" includes every person other than
58 a wholesale dealer mixing, making, compounding or
59 manufacturing any drink from a soft drink syrup or
60 powder base, or a person selling such syrup or powder.

61 (10) "Distributor" shall mean any person who manu-
62 factures, bottles, produces or purchases for sale to retail
63 dealers any bottled soft drink or soft drink syrup.

64 (11) "Commissioner" means the state tax commissioner,
65 and where the meaning of the context requires, all
66 deputies and employees duly authorized by him.

CHAPTER 129

(Com. Sub. for H. B. 904—By Mr. Tonkovich and Mr. Wiedebusch)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia personal income tax exemption of retirement income; exempting

survivorship annuities derived from all forms of military retirement income; increasing the exemption of retirement income received by persons over sixty-five, and providing such exemption shall apply to retirement income received by the surviving spouse of such person regardless of age.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.*—The West Virginia adjusted gross income
2 of a resident individual means his federal adjusted gross
3 income as defined in the laws of the United States for the
4 taxable year with the modifications specified in this section.

5 (b) *Modifications increasing federal adjusted gross in-*
6 *come.*—There shall be added to federal adjusted gross income:

7 (1) Interest income on obligations of any state other
8 than this state, or of a political subdivision of any such
9 other state unless created by compact or agreement to which
10 this state is a party;

11 (2) Interest or dividend income on obligations or securities
12 of any authority, commission or instrumentality of the United
13 States, which the laws of the United States exempt from
14 federal income tax but not from state income taxes;

15 (3) Income taxes imposed by this state or any other
16 taxing jurisdiction, to the extent deductible in determining
17 federal adjusted gross income and not credited against federal
18 income tax; and

19 (4) Interest on indebtedness incurred or continued to
20 purchase or carry obligations or securities the income from
21 which is exempt from tax under this article, to the extent
22 deductible in determining federal adjusted gross income.

23 (c) *Modifications reducing federal adjusted gross income.*

24 —There shall be subtracted from federal adjusted gross in-
25 come:

26 (1) Interest income on obligations of the United States
27 and its possessions to the extent includible in gross income
28 for federal income tax purposes;

29 (2) Interest or dividend income on obligations or securities
30 of any authority, commission or instrumentality of the United
31 States to the extent includible in gross income for federal
32 income tax purposes but exempt from state income taxes
33 under the laws of the United States;

34 (3) Any gain from the sale or other disposition of property
35 having a higher fair market value on the first day of January,
36 one thousand nine hundred sixty-one, than the adjusted basis
37 at said date for federal income tax purposes: *Provided*, That
38 the amount of this adjustment is limited to that portion of any
39 such gain which does not exceed the difference between such
40 fair market value and such adjusted basis: *Provided, however*,
41 That if such gain is considered a long-term capital gain for
42 federal income tax purposes, the modification shall be limited to
43 fifty per centum of such portion of the gain;

44 (4) The amount of any refund or credit for overpayment
45 of income taxes imposed by this state, or any other taxing
46 jurisdiction, to the extent properly included in gross income
47 for federal income tax purposes;

48 (5) Annuities, retirement allowances, returns of contri-
49 butions and any other benefit received under the public em-
50 ployees retirement system, the department of public safety
51 death, disability and retirement fund, the state teachers re-
52 tirement system, and all forms of military retirement, including
53 regular armed forces, reserves and national guard, including
54 any survivorship annuities derived therefrom, to the extent in-
55 cludible in gross income for federal income tax purposes;

56 (6) Retirement income received in the form of pensions
57 and annuities after the thirty-first day of December, one
58 thousand nine hundred seventy-five, by any person who has
59 attained the age of sixty-five or the surviving spouse of such
60 person regardless of age, from any source other than those
61 enumerated in subdivision (5) of this subsection to the extent

62 includible in gross income for federal tax purposes: *Provided*,
63 That the total modification for all retirement income received
64 from such sources other than those enumerated in subdivision
65 (5) of this subsection shall be limited to an amount in the ag-
66 gregate not to exceed eight thousand dollars per person; and

67 (7) Any pay or allowances received after the thirty-first
68 day of December, one thousand nine hundred seventy-three,
69 by West Virginia residents as compensation for active service
70 in the armed forces of the United States: *Provided*, That such
71 deduction shall be limited to an amount not to exceed four
72 thousand dollars.

73 (d) *Modification for West Virginia fiduciary adjustment.*
74 —There shall be added to or subtracted from federal adjusted
75 gross income, as the case may be, the taxpayer's share, as
76 beneficiary of an estate or trust, of the West Virginia fiduciary
77 adjustment determined under section nineteen.

78 (e) *Partners.*—The amounts of modifications required to
79 be made under this section by a partner, which relate to items
80 of income, gain, loss or deduction of a partnership, shall be
81 determined under section seventeen.

82 (f) *Husband and wife.*—If husband and wife determine
83 their federal income tax on a joint return but determine their
84 West Virginia income taxes separately, they shall determine
85 their West Virginia adjusted gross incomes separately as if their
86 federal adjusted gross incomes had been determined separately.

CHAPTER 130

(H. B. 1702—By Mr. Burke)

[Passed March 17, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

**PART I. DEFINITIONS,
IMPOSITION OF TAX AND RATE, AND EXEMPTIONS.**

§11-24-3. Meaning of terms.

1 (a) *General.*—Any term used in this article shall have
2 the same meaning as when used in a comparable context in the
3 laws of the United States relating to federal income taxes,
4 unless a different meaning is clearly required by the context
5 or by definition in this article. Any reference in this article
6 to the laws of the United States or to the Internal Revenue
7 Code or to the federal income tax law shall mean the pro-
8 visions of the laws of the United States as relate to the
9 determination of income for federal income tax purposes.
10 All amendments made to the laws of the United States prior
11 to the first day of January, one thousand nine hundred
12 seventy-six, shall be given effect in determining the taxes
13 imposed by this article for the tax period beginning the first
14 day of January, one thousand nine hundred seventy-six, and
15 thereafter, but no amendment to laws of the United States made
16 on or after the first day of January, one thousand nine hundred
17 seventy-six, shall be given effect.

18 (b) *Certain terms defined.*—For purposes of this article:

19 (1) The term “tax commissioner” means the tax com-
20 missioner of the state of West Virginia or his delegate.

21 (2) The term “corporation” means and includes a joint-
22 stock company or any association which is taxable as a
23 corporation under the federal income tax law.

24 (3) The term “domestic corporation” means any corpora-
25 tion organized under the laws of West Virginia.

26 (4) The term “foreign corporation” means any corporation
27 other than a domestic corporation.

28 (5) The term “state” means any state of the United

29 States, the District of Columbia, the Commonwealth of Puerto
30 Rico, any territory or possession of the United States, and
31 any foreign country or political subdivision thereof.

32 (6) The term "taxable year" means the taxable year for
33 which the taxable income of the taxpayer is computed under
34 the federal income tax law.

35 (7) The term "taxpayer" means a corporation subject to
36 the tax imposed by this article.

37 (8) The term "tax" includes, within its meaning, in-
38 terest and penalties unless the intention to give it a more
39 limited meaning is disclosed by the context.

40 (9) The term "commercial domicile" means the principal
41 place from which the trade or business of the taxpayer is
42 directed or managed.

43 (10) The term "compensation" means wages, salaries,
44 commissions and any form of remuneration paid to employees
45 for personal services.

46 (11) The term "West Virginia taxable income" means the
47 taxable income of a corporation as defined by the laws of
48 the United States for federal income tax purposes, adjusted
49 as provided in section six: *Provided*, That in the case of a
50 corporation having income from business activity which is
51 taxable without this state, its "West Virginia taxable income"
52 shall be such portion of its taxable income as so defined
53 and adjusted as is allocated or apportioned to this state under
54 the provisions of section seven.

55 (12) The term "business income" means income arising
56 from transactions and activity in the regular course of the
57 taxpayer's trade or business and includes income from tangible
58 and intangible property if the acquisition and disposition
59 of the property constitute integral parts of the taxpayer's
60 regular trade or business operations.

61 (13) The term "nonbusiness income" means all income
62 other than business income.

63 (14) The term "public utility" means any business activity
64 to which the jurisdiction of the public service commission of

65 West Virginia extends under section one, article two, chapter
66 twenty-four of the code of West Virginia.

67 (15) The term "this code" means the code of West Virginia,
68 one thousand nine hundred thirty-one, as amended.

69 (16) The term "this state" means the state of West
70 Virginia.

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CHAPTER 131

(H. B. 771—By Mr. Stacy)

[Passed February 24, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to real and personal property taxes; notice of time and place for payment; requiring sheriff to mail a copy of taxpayer's tax ticket to such taxpayer's last known address; providing for comparison of delinquent list with land books and mailing of copy of tax ticket to transferee shown on delinquent list.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-8. Notice of time and place for payment; mailing of tax tickets.

1 The sheriff may give notice by posting at not less than
2 six public places in each magisterial district, for at least
3 ten days before the time appointed, that between July
4 fifteenth and August thirty-first he will attend at one or
5 more of the most public and convenient places in each
6 district, such places to be specified in the notice, for the
7 purpose of receiving taxes due by the people residing or

8 paying taxes in such district. The notice shall also state
9 that those who pay the first installment of their taxes on
10 or before September first will be entitled to a discount of
11 two and one-half percent. Like notice may be given that
12 between January fifteenth and February twenty-eighth he will
13 again appear in each district for the collection of taxes,
14 and that those who pay their second installment on or before
15 March first will be entitled to the same discount. Failure
16 of the sheriff to post such lists shall not impair the right
17 to collect such taxes, the right to collect any interest or
18 penalty imposed as a result of the failure to pay such taxes,
19 or the methods of enforcing the payment of such taxes,
20 interest or penalty.

21 The county commission of any county may order that
22 the above notice shall also be given by advertisement. Such
23 an order, once entered, shall continue in effect until rescinded
24 by the county commission. Upon entry of such order, the
25 sheriff shall, besides posting as required above, publish the
26 proper notice as a Class II legal advertisement in compliance
27 with the provisions of article three, chapter fifty-nine of this
28 code, and the publication area for such publication shall be
29 the county. Such notice shall be so published within fourteen
30 consecutive days next preceding the fifteenth day of July or the
31 fifteenth day of January as the case may be. For every failure
32 so to advertise, the sheriff shall forfeit one hundred dollars.

33 Notwithstanding the foregoing provisions, the sheriff shall
34 send to every person owing real or personal property taxes
35 a copy of such taxpayers annual tax ticket or tickets showing
36 what tax is due and how such tax may be paid. Such copy
37 shall be sent to the last known address of such taxpayer by
38 first class United States mail.

39 Failure of the sheriff to send or failure of the taxpayer to
40 receive such copy shall not impair the right to collect such
41 taxes, the right to collect any interest or penalty imposed as
42 a result of the failure to pay such taxes, or the method of
43 enforcing the payment of such taxes, interest or penalty.

44 At such time as the sheriff prepares the delinquent list for
45 real property, he shall compare such list with a copy of the
46 land books most recently delivered by the assessor to the

47 board of review and equalization pursuant to section nineteen,
48 article three of this chapter. The assessor shall make a copy
49 of said land books available to the sheriff. If property on the
50 delinquent list should appear as a transfer on said land books
51 with the delinquent owner as the transferor, the sheriff shall
52 send to the transferee at his last known address by first class
53 United States mail a copy of the annual tax ticket or tickets
54 showing what taxes are due upon the real property of such
55 transferee and how they may be paid as prescribed in this
56 section.

57 Failure of the sheriff to send or failure of the taxpayer to
58 receive such copy shall not impair the right to collect such
59 taxes, the right to collect any interest or penalty imposed as
60 a result of the failure to pay such taxes, or the method of
61 enforcing the payment of such taxes, interest or penalty.

CHAPTER 132

(Com. Sub. for H. B. 1422—By Mr. Holmes and Mr. Tompkins)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one; sections three and ten, article six, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unemployment compensation; definitions; disqualification for benefits; and total and partial unemployment.

Be it enacted by the Legislature of West Virginia:

That section three, article one; sections three and ten, article six, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article

1. Department of Employment Security.
6. Employee Eligibility; Benefits.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.**§21A-1-3. Definitions.**

1 As used in this chapter, unless the context clearly requires
2 otherwise:

3 "Administration fund" means the employment security ad-
4 ministration fund, from which the administrative expenses
5 under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for
7 employment paid by an employer during a twelve-month
8 period ending with June thirty of any calendar year.

9 "Average annual payroll" means the average of the last
10 three annual payrolls of an employer.

11 "Base period" means the first four out of the last five
12 completed calendar quarters immediately preceding the first
13 day of the individual's benefit year.

14 "Base period employer" means any employer who in the
15 base period for any benefit year paid wages to an individual
16 who filed claim for unemployment compensation within such
17 benefit year.

18 "Base period wages" means wages paid to an individual
19 during the base period by all his base period employers.

20 "Benefit year" with respect to an individual means the
21 fifty-two week period beginning with the first day of the
22 calendar week in which a valid claim is effective and there-
23 after the fifty-two week period beginning with the first day
24 of the calendar week in which such individual next files a
25 valid claim for benefits after the termination of his last
26 preceding benefit year. An initial claim for benefits filed
27 in accordance with the provisions of this chapter shall be
28 deemed to be a valid claim within the purposes of this
29 definition if the individual has been paid wages in his base
30 period sufficient to make him eligible for benefits under
31 the provisions of this chapter.

32 "Benefits" means the money payable to an individual with
33 respect to his unemployment.

34 "Board" means board of review.

35 "Calendar quarter" means the period of three consecutive
36 calendar months ending on March thirty-one, June thirty,
37 September thirty or December thirty-one, or the equivalent
38 thereof as the commissioner may by regulation prescribe.

39 "Commissioner" means the employment security commis-
40 sioner.

41 "Computation date" means June thirty of the year im-
42 mediately preceding the January one on which an employer's
43 contribution rate becomes effective.

44 "Employing unit" means an individual, or type of or-
45 ganization, including any partnership, association, trust, estate,
46 joint-stock company, insurance company, corporation (domes-
47 tic or foreign), institution of higher education, or the receiver,
48 trustee in bankruptcy, trustee or successor thereof, or the
49 legal representative of a deceased person, which has on
50 January first, one thousand nine hundred thirty-five, or
51 subsequent thereto, had in its employ one or more individuals
52 performing service within this state.

53 "Employer" means:

54 (1) Until January one, one thousand nine hundred seventy-
55 two, any employing unit which for some portion of a day,
56 not necessarily simultaneously, in each of twenty different
57 calendar weeks, which weeks need not be consecutive, within
58 either the current calendar year, or the preceding calendar
59 year, has had in employment four or more individuals irre-
60 spective of whether the same individuals were or were not
61 employed on each of such days;

62 (2) Any employing unit which is or becomes a liable
63 employer under any federal unemployment tax act;

64 (3) Any employing unit which has acquired or acquires
65 the organization, trade or business, or substantially all the
66 assets thereof, of an employing unit which at the time of
67 such acquisition was an employer subject to this chapter;

68 (4) Any employing unit which, after December thirty-one,

69 one thousand nine hundred sixty-three, and until January
70 one, one thousand nine hundred seventy-two, in any one
71 calendar quarter, in any calendar year, has in employment
72 four or more individuals and has paid wages for employment
73 in the total sum of five thousand dollars or more, or which,
74 after such date, has paid wages for employment in any
75 calendar year in the sum total of twenty thousand dollars
76 or more;

77 (5) Any employing unit which, after December thirty-one,
78 one thousand nine hundred sixty-three, and until January
79 one, one thousand nine hundred seventy-two, in any three
80 weeks' period, in any calendar year, has in employment ten
81 or more individuals;

82 (6) For the effective period of its election pursuant to
83 section three, article five of this chapter, any employing unit
84 which has elected to become subject to this chapter;

85 (7) Any employing unit which, after December thirty-one,
86 one thousand nine hundred seventy-one, (i) in any calendar
87 quarter in either the current or preceding calendar year
88 paid for service in employment wages of one thousand five
89 hundred dollars or more, or (ii) for some portion of a day
90 in each of twenty different calendar weeks, whether or not
91 such weeks were consecutive, in either the current or the
92 preceding calendar year had in employment at least one
93 individual (irrespective of whether the same individual was
94 in employment in each such day);

95 (8) Any employing unit for which service in employment,
96 as defined in subdivision nine of the definition of "employ-
97 ment" in this section, is performed after December thirty-one,
98 one thousand nine hundred seventy-one;

99 (9) Any employing unit for which service in employment,
100 as defined in subdivision ten of the definition of "employ-
101 ment" in this section, is performed after December thirty-one,
102 one thousand nine hundred seventy-one.

103 "Employment," subject to the other provisions of this
104 section, means:

105 (1) Service, including service in interstate commerce, per-

106 formed for wages or under any contract of hire, written or
107 oral, express or implied;

108 (2) Any service performed prior to January one, one
109 thousand nine hundred seventy-two, which was employment
110 as defined in this section prior to such date and, subject to
111 the other provisions of this section, service performed after
112 December thirty-one, one thousand nine hundred seventy-one,
113 by an employee, as defined in section 3306(i) of the "Federal
114 Unemployment Tax Act," including service in interstate com-
115 merce;

116 (3) Any service performed prior to January one, one
117 thousand nine hundred seventy-two, which was employment as
118 defined in this section prior to such date and, subject to
119 the other provisions of this section, service performed after
120 December thirty-one, one thousand nine hundred seventy-one,
121 including service in interstate commerce, by any officer of a
122 corporation;

123 (4) An individual's entire service, performed within or
124 both within and without this state if: (a) The service is
125 localized in this state; or (b) the service is not localized
126 in any state but some of the service is performed in this
127 state and (i) the base of operations, or, if there is no base
128 of operations, then the place from which such service is
129 directed or controlled, is in this state; or (ii) the base of
130 operations or place from which such service is directed or
131 controlled is not in any state in which some part of the
132 service is performed but the individual's residence is in this
133 state;

134 (5) Service not covered under paragraph four of this
135 subdivision and performed entirely without this state with
136 respect to no part of which contributions are required and
137 paid under an unemployment compensation law of any other
138 state or of the federal government, shall be deemed to be
139 employment subject to this chapter if the individual perform-
140 ing such services is a resident of this state and the commis-
141 sioner approves the election of the employing unit for whom
142 such services are performed that the entire service of such
143 individual shall be deemed to be employment subject to
144 this chapter;

145 (6) Service shall be deemed to be localized within a
146 state, if: (a) The service is performed entirely within such
147 state; or (b) the service is performed both within and without
148 such state, but the service performed without such state is
149 incidental to the individual's service within this state, as,
150 for example, is temporary or transitory in nature or consists
151 of isolated transactions;

152 (7) Services performed by an individual for wages shall
153 be deemed to be employment subject to this chapter unless
154 and until it is shown to the satisfaction of the commissioner
155 that: (a) Such individual has been and will continue to be
156 free from control or direction over the performance of such
157 services, both under his contract of service and in fact; and
158 (b) such service is either outside the usual course of the
159 business for which such service is performed or that such
160 service is performed outside of all the places of business
161 of the enterprise for which such service is performed; and
162 (c) such individual is customarily engaged in an independently
163 established trade, occupation, profession or business;

164 (8) All service performed by an officer or member of
165 the crew of an American vessel (as defined in section three
166 hundred five of an act of Congress entitled "Social Security
167 Act Amendment of 1946," approved August tenth, one thou-
168 sand nine hundred forty-six) on or in connection with such
169 vessel, provided that the operating office, from which the
170 operations of such vessel operating on navigable waters
171 within and without the United States is ordinarily and
172 regularly supervised, managed, directed and controlled, is
173 within this state;

174 (9) Service performed after December thirty-one, one thou-
175 sand nine hundred seventy-one, by an individual in the
176 employ of this state or any of its instrumentalities (or in
177 the employ of this state and one or more other states or
178 their instrumentalities), when such service is performed for
179 a hospital or institution of higher education located in this
180 state: *Provided*, That such service is excluded from "em-
181 ployment" as defined in the "Federal Unemployment Tax
182 Act" solely by reason of section 3306(c) (7) of that act, and

183 is not excluded from "employment" under subdivision eleven
184 of the exclusions from the term "employment";

185 (10) Service performed after December thirty-one, one
186 thousand nine hundred seventy-one, by an individual in the
187 employ of a religious, charitable, educational or other or-
188 ganization but only if the following conditions are met:

189 (a) The service is excluded from "employment" as de-
190 fined in the "Federal Unemployment Tax Act" solely by
191 reason of section 3306(c) (8) of that act; and

192 (b) The organization had four or more individuals in em-
193 ployment for some portion of a day in each of twenty different
194 weeks, whether or not such weeks were consecutive, within
195 either the current or preceding calendar year, regardless of
196 whether they were employed at the same moment of time;

197 (11) Service of an individual who is a citizen of the
198 United States, performed outside the United States (except
199 in Canada or the Virgin Islands), after December thirty-one,
200 one thousand nine hundred seventy-one, in the employ of an
201 American employer (other than service which is deemed
202 "employment" under the provisions of subdivisions four, five
203 or six of this definition of "employment" or the parallel
204 provisions of another state's law), if:

205 (a) The employer's principal place of business in the
206 United States is located in this state; or

207 (b) The employer has no place of business in the United
208 States, but (i) the employer is an individual who is a resident
209 of this state; or (ii) the employer is a corporation which is
210 organized under the laws of this state; or (iii) the employer is
211 a partnership or a trust and the number of the partners or
212 trustees who are residents of this state is greater than the
213 number who are residents of any one other state; or

214 (c) None of the criteria of subparagraphs (a) and (b)
215 of this subdivision (11) is met but the employer has elected
216 coverage in this state or, the employer having failed to
217 elect coverage in any state, the individual has filed a claim
218 for benefits, based on such service, under the law of this state.

219 An "American employer," for purposes of this subdivision

220 (11), means a person who is (i) an individual who is a resident
221 of the United States; or (ii) a partnership if two thirds or more
222 of the partners are residents of the United States; or (iii) a
223 trust, if all of the trustees are residents of the United States; or
224 (iv) a corporation organized under the laws of the United
225 States or of any state.

226 Notwithstanding the foregoing definition of "employment,"
227 if the services performed during one half or more of any
228 pay period by an employee for the person employing him
229 constitute employment, all the services of such employee for
230 such period shall be deemed to be employment; but if the
231 services performed during more than one half of any such
232 pay period by an employee for the person employing him do
233 not constitute employment, then none of the services of such
234 employee for such period shall be deemed to be employment.

235 The term "employment" shall not include:

236 (1) Services performed in the employ of this state or any
237 political subdivision thereof, or any instrumentality of this state
238 or its subdivisions, except as otherwise provided herein;

239 (2) Service performed directly in the employ of another
240 state, or its political subdivisions;

241 (3) Service performed in the employ of the United
242 States or an instrumentality of the United States exempt
243 under the constitution of the United States from the pay-
244 ments imposed by this law, except that to the extent that
245 the Congress of the United States shall permit states to
246 require any instrumentalities of the United States to make
247 payments into an unemployment fund under a state unem-
248 ployment compensation law, all of the provisions of this
249 law shall be applicable to such instrumentalities, and to
250 service performed for such instrumentalities, in the same
251 manner, to the same extent and on the same terms as to all
252 other employers, employing units, individuals and services:
253 *Provided*, That if this state shall not be certified for any
254 year by the secretary of labor under section 1603(c) of the
255 "Federal Internal Revenue Code," the payments required of
256 such instrumentalities with respect to such year shall be re-
257 funded by the commissioner from the fund in the same

258 manner and within the same period as is provided in section
259 nineteen, article five of this chapter, with respect to pay-
260 ments erroneously collected;

261 (4) Service performed after June thirty, one thousand
262 nine hundred thirty-nine, with respect to which unem-
263 ployment compensation is payable under the "Railroad Un-
264 employment Insurance Act" and service with respect to
265 which unemployment benefits are payable under an un-
266 employment compensation system for maritime employees
267 established by an act of Congress. The commissioner may
268 enter into agreements with the proper agency established
269 under such an act of Congress to provide reciprocal
270 treatment to individuals who, after acquiring potential
271 rights to unemployment compensation under an act of Con-
272 gress, or who have, after acquiring potential rights to un-
273 employment compensation under an act of Congress, acquired
274 rights to benefit under this chapter. Such agreement shall
275 become effective ten days after such publications as comply
276 with the general rules of the department;

277 (5) Agricultural labor, and for the purposes of this chapter,
278 the term "agricultural labor" includes all services performed:

279 (a) On a farm, in the employ of any person, in connec-
280 tion with cultivating the soil, or in connection with raising
281 or harvesting any agricultural or horticultural commodity,
282 including the raising, shearing, feeding, caring for, training,
283 and management of livestock, bees, poultry, and fur-bearing
284 animals and wildlife;

285 (b) In the employ of the owner or tenant or other operator
286 of a farm, in connection with the operation, management,
287 conservation, improvement or maintenance of such farm and
288 its tools and equipment, or in salvaging timber or clearing land
289 of brush and other debris left by a hurricane, if the major
290 part of such service is performed on a farm;

291 (c) In connection with the production or harvesting
292 of any commodity defined as an agricultural commodity
293 in section 15(g) of the "Agricultural Marketing Act," as
294 amended or in connection with the ginning of cotton, or in
295 connection with the operation or maintenance of ditches,

296 canals, reservoirs or waterways, not owned or operated for
297 profit, used exclusively for supplying and storing water for
298 farming purposes;

299 (d) (i) In the employ of the operator of a farm in
300 handling, planting, drying, packing, packaging, processing,
301 freezing, grading, storing or delivering to storage or to
302 market or to a carrier for transportation to market, in its
303 unmanufactured state, any agricultural or horticultural com-
304 modity; but only if such operator produced more than one
305 half of the commodity with respect to which such service is
306 performed; or (ii) in the employ of a group of operators of
307 farms (or a cooperative organization of which such operators
308 are members) in the performance of service described in
309 subparagraph (i), but only if such operators produced more
310 than one half of the commodity with respect to which such
311 service is performed; but the provisions of subparagraphs
312 (i) and (ii) shall not be deemed to be applicable with
313 respect to service performed in connection with commercial
314 canning or commercial freezing or in connection with any
315 agricultural or horticultural commodity after its delivery to
316 a terminal market for distribution for consumption;

317 (e) On a farm operated for profit if such service is
318 not in the course of the employer's trade or business or is
319 domestic service in a private home of the employer. As
320 used in this subdivision (5), the term "farm" includes stock,
321 dairy, poultry, fruit, fur-bearing animal, and truck farms,
322 plantations, ranches, greenhouses and nurseries, or other
323 similar land areas or structures used primarily for the
324 raising of any agricultural or horticultural commodity, and
325 orchards, and the terms "greenhouses and nurseries" shall not
326 include greenhouses and nurseries employing more than fifteen
327 full-time employees;

328 (6) Domestic service in a private home;

329 (7) Service performed by an individual in the employ of
330 his son, daughter or spouse;

331 (8) Service performed by a child under the age of eighteen
332 years in the employ of his father or mother;

333 (9) Service as an officer or member of a crew of an

334 American vessel, performed on or in connection with such
335 vessel, if the operating office, from which the operations
336 of the vessel operating on navigable water within or without
337 the United States are ordinarily and regularly supervised,
338 managed, directed and controlled, is without this state;

339 (10) Services performed by agents of mutual fund broker-
340 dealers or insurance companies, exclusive of industrial in-
341 surance agents, or by agents of investment companies, who
342 are compensated wholly on a commission basis;

343 (11) Service performed (i) in the employ of a church or
344 convention or association of churches, or an organization
345 which is operated primarily for religious purposes and which
346 is operated, supervised, controlled, or principally supported
347 by a church or convention or association of churches;
348 or (ii) by a duly ordained, commissioned or licensed minis-
349 ter of a church in the exercise of his ministry or by a mem-
350 ber of a religious order in the exercise of duties required
351 by such order; or (iii) the employ of a school which is
352 not an institution of higher education; or (iv) in a facility
353 conducted for the purpose of carrying out a program of
354 rehabilitation for individuals whose earning capacity is im-
355 paired by age or physical or mental deficiency or injury
356 or providing remunerative work for individuals who be-
357 cause of their impaired physical or mental capacity cannot
358 be readily absorbed in the competitive labor market by an
359 individual receiving such rehabilitation or remunerative work;
360 or (v) as part of an unemployment work-relief or work-
361 training program assisted or financed in whole or in part
362 by any federal agency or an agency of a state or political
363 subdivision thereof, by an individual receiving such work
364 relief or work training; or (vi) for a hospital in a state
365 prison or other state correctional institution by an inmate of
366 the prison or correctional institution;

367 (12) Service performed, in the employ of a school, col-
368 lege or university, if such service is performed (i) by a
369 student who is enrolled and is regularly attending classes
370 at such school, college or university, or (ii) by the spouse
371 of such a student, if such spouse is advised, at the time
372 such spouse commences to perform such service, that (I) the

373 employment of such spouse to perform such service is pro-
374 vided under a program to provide financial assistance to such
375 student by such school, college or university, and (II) such
376 employment will not be covered by any program of unemploy-
377 ment insurance;

378 (13) Service performed by an individual under the age
379 of twenty-two who is enrolled at a nonprofit or public
380 educational institution which normally maintains a regular
381 faculty and curriculum and normally has a regularly or-
382 ganized body of students in attendance at the place where
383 its educational activities are carried on as a student in a
384 full-time program, taken for credit at such institution, which
385 combines academic instruction with work experience, if such
386 service is an integral part of such program, and such institution
387 has so certified to the employer, except that this subdivision
388 shall not apply to service performed in a program established
389 for or on behalf of an employer or group of employers;

390 (14) Service performed in the employ of a hospital, if
391 such service is performed by a patient of the hospital, as
392 defined in this section.

393 Notwithstanding the foregoing exclusions from the defi-
394 nition of "employment," services, except agricultural la-
395 bor and domestic service in a private home, shall be
396 deemed to be in employment if with respect to such services a
397 tax is required to be paid under any federal law imposing
398 a tax against which credit may be taken for contributions
399 required to be paid into a state unemployment compensation
400 fund.

401 "Employment office" means a free employment office or
402 branch thereof, operated by this state, or any free public
403 employment office maintained as a part of a state controlled
404 system of public employment offices in any other state.

405 "Fund" means the unemployment compensation fund estab-
406 lished by this chapter.

407 "Hospital" means an institution which has been licensed,
408 certified or approved by the state department of health as
409 a hospital.

410 "Institution of higher education" means an educational
411 institution which:

412 (1) Admits as regular students only individuals having
413 a certificate of graduation from a high school, or the recog-
414 nized equivalent of such a certificate;

415 (2) Is legally authorized in this state to provide a program
416 of education beyond high school;

417 (3) Provides an educational program for which it awards
418 a bachelor's or higher degree, or provides a program which is
419 acceptable for full credit toward such a degree, or provides a
420 program of post-graduate or post-doctoral studies, or provides
421 a program of training to prepare students for gainful employ-
422 ment in a recognized occupation; and

423 (4) Is a public or other nonprofit institution.

424 Notwithstanding any of the foregoing provisions of this
425 definition, all colleges and universities in this state are
426 institutions of higher education for purposes of this section.

427 "Payments" means the money required to be paid or
428 that may be voluntarily paid into the state unemployment
429 compensation fund as provided in article five of this chapter.

430 "Separated from employment" means, for the purposes
431 of this chapter, the total severance whether by quitting, dis-
432 charge or otherwise, of the employer-employee relationship.

433 "State" includes, in addition to the states of the United
434 States, Puerto Rico, District of Columbia and the Virgin
435 Islands.

436 "Total and partial unemployment" means:

437 (1) An individual shall be deemed totally unemployed in
438 any week in which such individual is separated from em-
439 ployment for an employing unit and during which he performs
440 no services and with respect to which no wages are payable
441 to him.

442 (2) An individual who has not been separated from employ-
443 ment shall be deemed to be partially unemployed in any week
444 in which due to lack of work he performs no services and

445 with respect to which no wages are payable to him, or in any
446 week in which due to lack of full-time work wages payable
447 to him are less than his weekly benefit amount plus fifteen
448 dollars.

449 "Wages" means all remuneration for personal service,
450 including commissions and bonuses and the cash value of all
451 remuneration in any medium other than cash: *Provided*, That
452 the term "wages" shall not include:

453 (1) That part of the remuneration which, after remunera-
454 tion equal to three thousand dollars has been paid to an
455 individual by an employer with respect to employment during
456 any calendar year, is paid after December thirty-one, one
457 thousand nine hundred thirty-nine, and prior to January
458 one, one thousand nine hundred forty-seven, to such in-
459 dividual by such employer with respect to employment during
460 such calendar year; or that part of the remuneration which,
461 after remuneration equal to three thousand dollars with
462 respect to employment after one thousand nine hundred
463 thirty-eight has been paid to an individual by an employer
464 during any calendar year after one thousand nine hundred
465 forty-six, is paid to such individual by such employer
466 during such calendar year, except that for the purposes of
467 sections one, ten, eleven and thirteen, article six of this
468 chapter, all remuneration earned by an individual in em-
469 ployment shall be credited to the individual and included
470 in his computation of base period wages: *Provided*, That
471 notwithstanding the foregoing provisions, on and after Jan-
472 uary one, one thousand nine hundred sixty-two, the term
473 "wages" shall not include:

474 That part of the remuneration which, after remuneration
475 equal to three thousand six hundred dollars has been paid
476 to an individual by an employer with respect to employment
477 during any calendar year, is paid during any calendar year
478 after one thousand nine hundred sixty-one; and shall not
479 include that part of remuneration which, after remuneration
480 equal to four thousand two hundred dollars is paid during a
481 calendar year after one thousand nine hundred seventy-one to
482 an individual by an employer or his predecessor with respect
483 to employment during any calendar year, is paid to such

484 individual by such employer during such calendar year unless
485 that part of the remuneration is subject to a tax under a
486 federal law imposing a tax against which credit may be
487 taken for contributions required to be paid into a state
488 unemployment fund. For the purposes of this subdivision
489 (1), the term employment shall include service constituting
490 employment under any unemployment compensation law of
491 another state; or which as a condition for full tax credit
492 against the tax imposed by the "Federal Unemployment Tax
493 Act" is required to be covered under this chapter; and,
494 except, that for the purposes of sections one, ten, eleven
495 and thirteen, article six of this chapter, all remuneration
496 earned by an individual in employment shall be credited to
497 the individual and included in his computation of base
498 period wages: *Provided, however,* That the remuneration paid
499 to an individual by an employer with respect to employment
500 in another state or other states upon which contributions
501 were required of and paid by such employer under an
502 unemployment compensation law of such other state or states
503 shall be included as a part of the remuneration equal to
504 the amounts of three thousand six hundred dollars or four
505 thousand two hundred dollars herein referred to. In ap-
506 plying such limitation on the amount of remuneration that
507 is taxable an employer shall be accorded the benefit of all
508 or any portion of such amount which may have been paid by
509 its predecessor or predecessors: *Provided further,* That if
510 the definition of the term "wages" as contained in section
511 3306(b) of the "Internal Revenue Code of 1954" as amended;
512 (a) effective prior to January one, one thousand nine
513 hundred sixty-two, to include remuneration in excess of
514 three thousand dollars, or (b) effective on or after Jan-
515 uary one, one thousand nine hundred sixty-two, to include
516 remuneration in excess of three thousand six hundred dol-
517 lars, or effective on or after January one, one thousand
518 nine hundred seventy-two, to include remuneration in excess
519 of four thousand two hundred dollars, paid to an individual
520 by an employer under the "Federal Unemployment Tax Act"
521 during any calendar year, wages for the purposes of this
522 definition shall include remuneration paid in a calendar
523 year to an individual by an employer subject to this article

524 or his predecessor with respect to employment during any
525 calendar year up to an amount equal to the amount of
526 remuneration taxable under the "Federal Unemployment Tax
527 Act";

528 (2) The amount of any payment made after December
529 thirty-one, one thousand nine hundred fifty-two (including
530 any amount paid by an employer for insurance or annuities,
531 or into a fund, to provide for any such payment), to, or on
532 behalf of, an individual in its employ or any of his de-
533 pendents, under a plan or system established by an em-
534 ployer which makes provision for individuals in its employ
535 generally (or for such individuals and their dependents), or
536 for a class or classes of such individuals (or for a class
537 or classes of such individuals and their dependents), on
538 account of (A) retirement, or (B) sickness or accident dis-
539 ability, or (C) medical or hospitalization expenses in con-
540 nection with sickness or accident disability, or (D) death;

541 (3) Any payment made after December thirty-one, one
542 thousand nine hundred fifty-two, by an employer to an
543 individual in its employ (including any amount paid by an
544 employer for insurance or annuities, or into a fund, to
545 provide for any such payment) on account of retirement;

546 (4) Any payment made after December thirty-one, one
547 thousand nine hundred fifty-two, by an employer on account
548 of sickness or accident disability, or medical or hospitaliza-
549 tion expenses in connection with sickness or accident dis-
550 ability, to, or on behalf of, an individual in its employ
551 after the expiration of six calendar months following the last
552 calendar month in which such individual worked for such
553 employer;

554 (5) Any payment made after December thirty-one, one
555 thousand nine hundred fifty-two, by an employer to, or on
556 behalf of, an individual in its employ or his beneficiary
557 (A) from or to a trust described in section 401(a) which
558 is exempt from tax under section 501(a) of the "Federal
559 Internal Revenue Code" at the time of such payment unless
560 such payment is made to such individual as an employee of
561 the trust as remuneration for services rendered by such

562 individual and not as a beneficiary of the trust, or (B)
563 under or to an annuity plan which, at the time of such
564 payment, is a plan described in section 403(a) of the "Federal
565 Internal Revenue Code";

566 (6) The payment by an employer (without deduction from
567 the remuneration of the individual in its employ) of the tax
568 imposed upon an individual in its employ under section 3101
569 of the "Federal Internal Revenue Code";

570 (7) Remuneration paid by an employer after December
571 thirty-one, one thousand nine hundred fifty-two, in any
572 medium other than cash to an individual in its employ for
573 service not in the course of the employer's trade or business;

574 (8) Any payment (other than vacation or sick pay) made
575 by an employer after December thirty-one, one thousand nine
576 hundred fifty-two, to an individual in its employ after the
577 month in which he attains the age of sixty-five, if he did
578 not work for the employer in the period for which such
579 payment is made;

580 (9) Payments, not required under any contract of hire,
581 made to an individual with respect to his period of training
582 or service in the armed forces of the United States by an
583 employer by which such individual was formerly employed;

584 (10) Vacation pay, severance pay, or savings plans received
585 by an individual after becoming totally or partially unemployed
586 but earned prior to becoming totally or partially unemployed:
587 *Provided, however,* That the term totally or partially unem-
588 ployed shall not be interpreted to include employees who are on
589 vacation by reason of their request, or the request of their duly
590 authorized agent for a vacation at a specific time, which re-
591 quest is acceded to by their employer;

592 Gratuities customarily received by an individual in the
593 course of his employment from persons other than his em-
594 ploying unit shall be treated as wages paid by his employing
595 unit, if accounted for and reported to such employing unit.

596 The reasonable cash value of remuneration in any medium
597 other than cash shall be estimated and determined in ac-
598 cordance with rules prescribed by the commissioner.

599 "Week" means a calendar week, ending at midnight Sat-
600 urday, or the equivalent thereof, as determined in accordance
601 with the regulations prescribed by the commissioner.

602 "Weekly benefit rate" means the maximum amount of
603 benefit an eligible individual will receive for one week of total
604 unemployment.

605 "Year" means a calendar year or the equivalent thereof,
606 as determined by the commissioner.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner,
2 an individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent work
4 voluntarily without good cause involving fault on the part of
5 the employer and the six weeks immediately following such
6 week. Such disqualification shall carry a reduction in the maxi-
7 mum benefit amount equal to six times the individual's week-
8 ly benefit rate. However, if the claimant returns to work in
9 covered employment during his benefit year, the maximum
10 benefit amount shall be increased by the amount of decrease
11 imposed under the disqualification. For the purpose of this
12 subdivision, the term "work" means employment with the last
13 employing unit with whom such individual was employed as
14 much as thirty days, whether or not such days are consecutive.

15 For purposes of this subdivision (1), an individual shall not
16 be deemed to have left his most recent work voluntarily with-
17 out good cause involving fault on the part of the employer, if
18 such individual leaves his work with an employer with whom
19 he has been employed at least thirty working days or more for
20 the purpose of returning to, and if he in fact, within a fourteen-
21 day calendar period, does return to, employment with the last
22 preceding employer with whom he was previously employed
23 within the past year prior to his return to work day, and which
24 last preceding employer, after having previously employed such

25 individual for thirty working days or more, laid off such indi-
26 vidual because of lack of work, which layoff occasioned the
27 payment of benefits under this chapter or could have occas-
28 ioned the payment of benefits under this chapter had such
29 individual applied for such benefits. It is the intent of this
30 paragraph to cause no disqualification for benefits for such an
31 individual who complies with the foregoing set of requirements
32 and conditions. Benefits paid to such individual under the
33 provisions of this chapter shall, notwithstanding the provisions
34 of subsection (2), section seven, article five of this chapter,
35 and of subdivision (12) of this section three, be charged to the
36 account of such last preceding employer with whom such in-
37 dividual was previously employed for thirty working days.

38 (2) For the week in which he was discharged from his most
39 recent work for misconduct and the six weeks immediately
40 following such week; or for the week in which he was dis-
41 charged from his last thirty-day employing unit for misconduct
42 and the six weeks immediately following such week. Such dis-
43 qualification shall carry a reduction in the maximum benefit
44 amount equal to six times the individual's weekly benefit. How-
45 ever, if the claimant returns to work in covered employment
46 for thirty days during his benefit year, whether or not such
47 days are consecutive, the maximum benefit amount shall be
48 increased by the amount of the decrease imposed under the
49 disqualification; except that:

50 If he were discharged from his most recent work for one
51 of the following reasons; or if he were discharged from his
52 last thirty-day employing unit for one of the following reasons:
53 Misconduct consisting of willful destruction of his employer's
54 property, assault upon the person of his employer or any em-
55 ployee of his employer, if such assault is committed at such
56 individual's place of employment or in the course of employ-
57 ment; reporting to work in an intoxicated condition, or being
58 intoxicated while at work; arson, theft, larceny, fraud or em-
59 bezzlement in connection with his work; or any other gross
60 misconduct; he shall be and remain disqualified for benefits
61 until he has thereafter worked for at least thirty days in covered
62 employment.

63 (3) For the week in which he failed without good cause to

64 apply for available suitable work, accept suitable work when
65 offered, or return to his customary self-employment when di-
66 rected to do so by the commissioner, and for the four weeks
67 which immediately follow for such an additional period as any
68 offer of suitable work shall continue open for his acceptance.

69 (4) For a week in which his total or partial unemployment
70 is due to a stoppage of work which exists because of a labor
71 dispute at the factory, establishment or other premises at
72 which he was last employed, unless the commissioner is satis-
73 fied that he was not (one) participating, financing, or directly
74 interested in such dispute, and (two) did not belong to a grade
75 or class of workers who were participating, financing, or di-
76 rectly interested in the labor dispute which resulted in the
77 stoppage of work. No disqualification under this subdivision
78 shall be imposed if the employees are required to accept wages,
79 hours or conditions of employment substantially less favorable
80 than those prevailing for similar work in the locality, or if
81 employees are denied the right of collective bargaining under
82 generally prevailing conditions, or if an employer shuts down
83 his plant or operation or dismisses his employees in order to
84 force wage reduction, changes in hours or working conditions.

85 For the purpose of this subdivision, if any stoppage of work
86 continues longer than four weeks after the termination of the
87 labor dispute which caused stoppage of work, there shall be a
88 rebuttable presumption that that part of the stoppage of work
89 which exists after said period of four weeks after the termi-
90 nation of said labor dispute, did not exist because of said labor
91 dispute; and in such event the burden shall be upon the em-
92 ployer or other interested party to show otherwise.

93 (5) For a week with respect to which he is receiving or
94 has received:

95 (a) Wages in lieu of notice;

96 (b) Compensation for temporary total disability under the
97 workmen's compensation law of any state or under a similar
98 law of the United States;

99 (c) Unemployment compensation benefits under the laws
100 of the United States or any other state.

101 (6) For the week in which an individual has volun-
102 tarily quit employment to marry or to perform any marital,
103 parental or family duty, or to attend to his or her per-
104 sonal business or affairs and until the individual returns
105 to covered employment and has been employed in covered
106 employment at least thirty working days.

107 (7) For the week in which an individual:

108 (a) Voluntarily quit her employment because of preg-
109 nancy, whether or not upon a physician's advice, and until
110 she returns to covered employment and has been employed
111 therein at least thirty working days; except that such dis-
112 qualification shall last no longer than six weeks subsequent
113 to the birth of her child, provided such individual furnishes
114 to the department a certificate from a physician that she is
115 physically able to work;

116 (b) Was discharged or laid off from her employment
117 because of pregnancy and until she returns to covered
118 employment and has been employed therein at least thirty
119 working days; except that such disqualification shall last
120 no longer than six weeks prior to and six weeks subsequent
121 to the date of birth of the child, provided such individual
122 furnishes to the department certificates from a physician that
123 she is physically able to work.

124 (8) For each week in which an individual is unem-
125 ployed because, having voluntarily left employment to
126 attend a school, college, university or other educational
127 institution, he is attending such school, college, university
128 or other educational institution, or is awaiting entrance
129 thereto or is awaiting the starting of a new term or ses-
130 sion thereof, and until the individual returns to covered em-
131 ployment.

132 (9) For each week in which he is unemployed because of
133 his request, or that of his duly authorized agent, for a vacation
134 period at a specified time that would leave the employer no
135 other alternative but to suspend operations.

136 (10) For each week in which he is receiving or has received
137 remuneration in the form of an annuity, pension, or other re-
138 tirement pay, from an employer or from any trust or fund
139 contributed to by an employer. But if such remuneration for

140 any week is less than the benefits which would otherwise be
141 due him for such week under this chapter, he shall be entitled
142 to receive for such week, if otherwise eligible, benefits reduced
143 by the amount of such remuneration: *Provided*, That if such
144 amount of benefits is not a multiple of one dollar, it shall be
145 computed to the next higher multiple of one dollar: *Provided*,
146 *however*, That there shall be no disqualification if in the indi-
147 vidual's base period there are no wages which were paid by the
148 employer paying such remuneration, or by a fund into which
149 the employer has paid during said base period. Claimant may
150 be required to certify as to whether or not he is receiving or
151 has received remuneration in the form of an annuity, pension,
152 or other retirement pay from an employer or from a trust
153 fund contributed to by an employer.

154 (11) For each week with respect to which he knowingly
155 made a false statement or representation knowing it to be
156 false or knowingly failed to disclose a material fact in order
157 to obtain or increase a benefit under this article. For each
158 week of disqualification he shall be disqualified an additional
159 five weeks and his maximum benefit amount shall be re-
160 duced by an amount equal to five times his weekly benefit rate.
161 Such five weeks' disqualification periods are to run consecutive-
162 ly beginning with the first week in which it is determined a
163 fraudulent claim was filed: *Provided further*, That an indi-
164 vidual shall not be disqualified under this subdivision for a
165 period of more than fifty-two consecutive weeks: *And pro-*
166 *vided further*, That disqualification under this subdivision shall
167 not preclude prosecution under section seven, article ten of
168 this chapter.

169 (12) For the purposes of this section an employer's ac-
170 count shall not be charged under any of the following condi-
171 tions: When benefits are paid for unemployment immediately
172 after the expiration of a period of disqualification for (a) leav-
173 ing work voluntarily without good cause involving fault on the
174 part of the employer, (b) discharge for any of the causes set
175 forth in subdivision (2) of this section, (c) failing without good
176 cause to apply for available suitable work, accept suitable
177 work, when offered, or to return to his customary self-em-
178 ployment when directed to do so by the commissioner.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

1 Each eligible individual who is totally unemployed in any
 2 week shall be paid benefits with respect to that week at the
 3 weekly rate appearing in Column (C) in Table A in this
 4 paragraph, on the line on which in Column (A) there is
 5 indicated the employee's wage class, except as otherwise
 6 provided under the term "total and partial unemployment" in
 7 section three, article one of this chapter. The employee's wage
 8 class shall be determined by his base period wages as shown
 9 in Column (B) in Table A. The right of an employee to
 10 receive benefits shall not be prejudiced nor the amount thereof
 11 be diminished by reason of failure by an employer to pay
 12 either the wages earned by the employee or the contribution
 13 due on such wages. An individual who is totally unemployed
 14 but earns in excess of twenty-five dollars as a result of
 15 odd-job or subsidiary work in any benefit week shall be
 16 paid benefits for such week in accordance with the provisions
 17 of this chapter pertaining to benefits for partial unemployment.

TABLE A

Wage Class		Wages in Base Period		Weekly Benefit Rate	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment
(Column A)		(Column B)		(Column C)	(Column D)
18		Under \$ 700.00		Ineligible	-----
19	1	700.00	799.99	\$ 12.00	\$312.00
20	2	800.00	899.99	13.00	338.00
21	3	900.00	999.99	14.00	364.00
22	4	1,000.00	1,149.99	15.00	390.00
23	5	1,150.00	1,299.99	16.00	416.00
24	6	1,300.00	1,449.99	17.00	442.00
25	7	1,450.00	1,599.99	18.00	468.00
26	8	1,600.00	1,749.99	19.00	494.00
27	9	1,750.00	1,899.99	20.00	520.00
28	10	1,900.00	2,049.99	21.00	546.00
29	11	2,050.00	2,199.99	22.00	572.00
30	12	2,200.00	2,349.99	23.00	598.00

		(Column A)	(Column B)	(Column C)	(Column D)
31	13	2,350.00	2,499.99	24.00	624.00
32	14	2,500.00	2,599.99	25.00	650.00
33	15	2,600.00	2,699.99	26.00	676.00
34	16	2,700.00	2,799.99	27.00	702.00
35	17	2,800.00	2,899.99	28.00	728.00
36	18	2,900.00	2,999.99	29.00	754.00
37	19	3,000.00	3,099.99	30.00	780.00
38	20	3,100.00	3,199.99	31.00	806.00
39	21	3,200.00	3,349.99	32.00	832.00
40	22	3,350.00	3,499.99	33.00	858.00
41	23	3,500.00	3,649.99	34.00	884.00
42	24	3,650.00	3,799.99	35.00	910.00

43 Notwithstanding any of the foregoing provisions of this
 44 section, on and after July one, one thousand nine hundred
 45 sixty-seven, the maximum weekly benefit rate shall be forty
 46 percent of the average weekly wage in West Virginia.

47 Notwithstanding any of the foregoing provisions of this
 48 section, on and after July one, one thousand nine hundred
 49 seventy, the maximum weekly benefit rate shall be forty-five
 50 percent of the average weekly wage in West Virginia.

51 Notwithstanding any of the foregoing provisions of this
 52 section, on and after July one, one thousand nine hundred
 53 seventy-one, the maximum weekly benefit rate shall be fifty
 54 percent of the average weekly wage in West Virginia.

55 Notwithstanding any of the foregoing provisions of this
 56 section, on and after July one, one thousand nine hundred
 57 seventy-three, the maximum weekly benefit rate shall be fifty-
 58 five percent of the average weekly wage in West Virginia.

59 The commissioner, after he has determined the maximum
 60 weekly benefit rate upon the basis of the above formula, shall
 61 establish as many additional wage classes as are required,
 62 increasing the amount of base period wages required for each
 63 class by one hundred fifty dollars, the weekly benefit rate
 64 for each class by one dollar, and the maximum benefit by
 65 twenty-six dollars. The maximum weekly benefit rate, when
 66 computed by the commissioner, in accordance with the forego-

ing provisions, shall be rounded to the next higher dollar amount, if the computation exceeds forty-nine percent of a dollar amount. Such rounding off to the next higher dollar amount shall result in one additional wage class, with commensurate base period wage requirement of one hundred fifty dollars over the preceding wage class, and with a maximum benefit increase over the preceding wage class of twenty-six dollars. Such an additional wage class shall be published by the commissioner with the table required to be published by the foregoing provisions of this section.

Notwithstanding any of the foregoing provisions of this section, including Table A, on and after July one, one thousand nine hundred seventy-four:

(1) The maximum weekly benefit rate shall be sixty-six and two-thirds percent of the average weekly wage in West Virginia.

(2) The weekly benefit rate [Column (C) of said Table A] in each and every wage class, one through twenty-four, both inclusive [Column (A) of said Table A], shall be increased two dollars, and the maximum benefit in benefit year for total and/or partial unemployment [Column (D) of said Table A] in each and every wage class [Column (A) of said Table A], shall be increased fifty-two dollars.

(3) The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the formula set forth in subdivision (1) above, shall establish as many additional wage classes as are required, increasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty percent of one fifty-second of the median dollar amount of wages in base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next higher dollar amount, if the computation exceeds forty-nine percent of a dollar amount. Such rounding off to the next higher dollar amount shall result in one additional

106 wage class, with commensurate base period wage requirement
107 of one hundred fifty dollars over the preceding wage class,
108 and with a maximum benefit increase over the preceding
109 wage class of twenty-six dollars. Such an additional wage
110 class shall be published by the foregoing provisions of this
111 section.

112 After he has established such additional wage classes, the
113 commissioner shall prepare and publish a table setting forth
114 such information.

115 Average weekly wage shall be computed by dividing the
116 number of employees in West Virginia earning wages in
117 covered employment into the total wages paid to employees
118 in West Virginia in covered employment, and by further
119 dividing said result by fifty-two, and shall be determined from
120 employer wage and contribution reports for the previous calen-
121 dar year which are furnished to the department on or before
122 June one following such calendar year. The average weekly
123 wage, as determined by the commissioner, shall be rounded
124 to the next higher dollar.

125 The computation and determination of rates as aforesaid
126 shall be completed annually before July one, and any such
127 new wage class, with its corresponding wages in base period,
128 weekly benefit rate, and maximum benefit in a benefit year
129 established by the commissioner in the foregoing manner ef-
130 fective on a July one, shall apply only to a new claim estab-
131 lished by a claimant on and after said July one, and shall not
132 apply to continued claims of a claimant based on his new claim
133 established before said July one.

CHAPTER 133

(Com. Sub. for S. B. 173—By Mr. Oates and Mr. Nelson)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six, eight
and nine, article twenty-six, chapter eighteen of the code
of West Virginia, one thousand nine hundred thirty-one, as

amended; and to further amend said article by adding thereto two new sections, designated sections nine-a and nine-b, all relating to the West Virginia board of regents, its membership, terms, appointment of members, meetings, powers and duties in regard to budget submissions and advisory boards; creating the advisory council of faculty and the advisory council of students and specifying the elections of such councils and the meetings and procedures of such councils.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six, eight and nine, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted; and that said article be further amended by adding thereto two new sections, designated sections nine-a and nine-b, all to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

- §18-26-4. Composition of board; terms of members; qualifications of members.
- §18-26-5. Commencement of terms of members; vacancies; eligibility for reappointment; oath of office; removal from office.
- §18-26-6. Meetings; quorum; per diem and expenses of members.
- §18-26-8. Powers and duties.
- §18-26-9. Advisory boards.
- §18-26-9a. Advisory council of faculty.
- §18-26-9b. Advisory council of students.

§18-26-4. Composition of board; terms of members; qualifications of members.

1 The board shall consist of twelve members, of whom
2 one shall be the state superintendent of schools, ex
3 officio, who shall not be entitled to vote, one shall be the
4 chairman of the advisory council of students, ex officio,
5 who shall not be entitled to vote, and one shall be the
6 chairman of the advisory council of faculty, ex officio,
7 who shall not be entitled to vote. The other nine members
8 shall be citizens of the state, appointed by the governor,
9 by and with the advice and consent of the Senate, for
10 overlapping terms of six years, except that three of the
11 original appointments shall be for terms of two years,
12 three of the original appointments shall be for terms of

13 four years, and three of the original appointments shall
14 be for terms of six years.

15 Each of the members appointed to the board by the
16 governor shall be especially qualified in the field of
17 higher education by virtue of his knowledge, learning,
18 experience or interest in the field.

19 Except for the ex officio members, no person shall be
20 eligible for appointment to membership on the board who
21 is an officer, employee or member of an advisory board
22 of any state college or university, or an officer or member
23 of any political party executive committee, or the holder
24 of any other public office or public employment under the
25 federal government or under the government of this state
26 or any of its political subdivisions, or an appointee or
27 employee of the board. Of the nine members appointed
28 by the governor from the public at large, not more than
29 five thereof shall belong to the same political party and
30 at least one member of the board shall be appointed from
31 each congressional district.

32 Except as provided in this section, no other person may
33 be appointed to the board.

**§18-26-5. Commencement of terms of members; vacancies;
eligibility for reappointment; oath of office; removal
from office.**

1 The governor shall appoint the nine members of the
2 board to be appointed by him as soon after the effective
3 date of this article as is practicable, and the original
4 terms of the nine members appointed by the governor
5 and of the one member, who is such by virtue of being
6 the state superintendent of schools, shall commence on
7 July one, one thousand nine hundred sixty-nine. The
8 chairman of the advisory council of students, ex officio
9 and the chairman of the advisory council of faculty, ex
10 officio, shall serve one-year terms, beginning on the first
11 day of September, one thousand nine hundred seventy-
12 six, and annually thereafter; these members shall be
13 eligible to succeed themselves. All members of the board
14 of regents serving as of the effective date of this enact-

15 ment shall continue to serve until the end of their term
16 as provided for above.

17 The governor shall appoint a member to fill any va-
18 cancy among the nine members of the board appointed by
19 the governor, by and with the advice and consent of the
20 Senate, which member appointed to fill such vacancy
21 shall serve for the unexpired term of the vacating mem-
22 ber.

23 All members of the board appointed by the governor
24 shall be eligible for reappointment. A person who has
25 served as a member during all or any part of the two
26 consecutive terms shall be ineligible to serve as a member
27 for a period of three years immediately following the
28 second of the two consecutive terms.

29 Before exercising any authority or performing any
30 duties as a member of the board, each member shall
31 qualify as such by taking and subscribing to the oath of
32 office prescribed by section five, article four of the state
33 constitution, the certificate whereof shall be filed with
34 the secretary of state.

35 No member of the board appointed by the governor
36 may be removed from office by the governor except for
37 official misconduct, incompetence, neglect of duty, or
38 gross immorality and then only in the manner prescribed
39 by law for the removal by the governor of state elective
40 officers.

**§18-26-6. Meetings; quorum; per diem and expenses of mem-
bers.**

1 The board shall hold at least six meetings in every
2 fiscal year commencing July one and ending the following
3 June thirty, one of which meetings, to be known as the
4 annual meeting, shall be held in July, or as soon thereafter
5 as practicable, in the year one thousand nine hundred
6 sixty-nine and in June of each subsequent year. Annual
7 meetings, as well as the five additional required meetings
8 in each fiscal year, shall be held on such dates and at
9 such places as the board may prescribe, subject only to
10 the requirement that the annual meeting shall be held in

11 June. In addition to the statutorily required meetings, the
12 board may meet at such other times as may be necessary,
13 such meetings to be held upon its own resolution or at the
14 call of the president of the board.

15 Of the nine appointed, five members of the board shall
16 constitute a quorum, and a majority vote of the quorum
17 shall be necessary to pass upon matters before the board.

18 The members of the board shall be paid fifty dollars
19 per diem for actual time spent in the performance of
20 duties under this article, and shall be reimbursed for
21 actual and necessary expenses incident to the performance
22 of their duties, upon presentation of an itemized sworn
23 statement thereof. The foregoing per diem and reimburse-
24 ment for actual and necessary expenses shall be paid from
25 appropriations made by the Legislature to the board.

§18-26-8. Powers and duties.

1 On and after the effective date of this article, the gen-
2 eral determination, control, supervision and management
3 of the financial, business and educational policies and
4 affairs of all state colleges and universities shall be under
5 the control, supervision and management of the board.
6 In addition, the board is fully authorized and empowered
7 to make studies and recommendations relating to all
8 aspects of higher education in the state; it shall, upon
9 reasonable basis, prescribe and allocate among the state
10 colleges and universities specific functions and responsi-
11 bilities to meet the higher educational needs of the state
12 and avoid unnecessary duplication; and it shall consider,
13 revise, and submit to the appropriate agencies of the
14 executive and legislative branches of state government
15 separate budget requests on behalf of the state colleges
16 and universities or the board may, in its discretion, sub-
17 mit a single budget for the state colleges and universities
18 and allocate among them appropriations made for the
19 state colleges and universities, but, if a single budget is
20 submitted, it shall be accompanied by a tentative schedule
21 of proposed allocations of funds to the separate colleges
22 and universities.

23 The power herein given to the board to prescribe and
24 allocate among the state colleges and universities specific
25 functions and responsibilities to meet the higher educa-
26 tional needs of the state and avoid unnecessary duplica-
27 tion shall not be restricted by any provision of law
28 assigning specified functions and responsibilities to desig-
29 nated state colleges and universities but such power shall
30 supersede any such provision of law: *Provided*, That
31 the board may delegate, with prescribed standards and
32 limitations, such part of its power and control over the
33 business affairs of a particular university or state college
34 to the president or other administrative head of such
35 university or college in any case where it deems such
36 delegation necessary and prudent in order to enable such
37 institution to function in a proper and expeditious manner.
38 Any such delegation or power and control may be re-
39 scinded by the board at any time, in whole or in part.

40 The board is authorized and empowered, from time to
41 time, to promulgate such rules and regulations as it may
42 deem necessary and convenient to insure the full imple-
43 mentation of its powers and duties.

§18-26-9. Advisory boards.

1 Each state college and university president or other
2 administrative head shall be authorized to appoint an ad-
3 visory board, consisting of seven members, to serve as
4 advisors and consultants to him.

5 The appointments shall be for terms of seven years,
6 except that the original appointments shall be for terms
7 of one, two, three, four, five, six and seven years. There-
8 after each member shall be appointed to serve for a term
9 of seven years or until his successor is appointed. An
10 appointment to fill a vacancy shall be for the unexpired
11 term of the vacating member.

12 Members of advisory boards shall be eligible to succeed
13 themselves. Members of advisory boards shall serve
14 without compensation, but shall be entitled to reimburse-
15 ment for actual and necessary expenses incurred in the
16 performance of the duties of their office to be paid by the
17 state college or university served.

18 The advisory boards created pursuant to this section as
19 it existed in chapter one hundred thirty, acts of the Legis-
20 lature, one thousand nine hundred sixty-nine, are hereby
21 abolished; members of those advisory boards shall be
22 eligible for appointment to the advisory boards created
23 by this section.

§18-26-9a. Advisory council of faculty.

1 During the month of September, one thousand nine
2 hundred seventy-six, and annually thereafter, each state
3 college, community college, including Potomac State
4 College of West Virginia University, and university presi-
5 dent or other administrative head shall convene a meeting
6 of all faculty members at his institution. At these meet-
7 ings, the faculty members of each such college and uni-
8 versity shall elect one faculty member to serve on the
9 advisory council of faculty, which is hereby created, con-
10 sisting of one faculty member, so elected, from each such
11 college and university. Terms of the members of such
12 council shall be for one year and shall begin on the first
13 day of October of each year.

14 The advisory council of faculty shall meet at least once
15 each quarter, and shall meet during each month of Octo-
16 ber, at which meeting the council shall elect a chairman,
17 who shall be, by virtue of his office, a member of the
18 West Virginia board of regents.

19 The advisory council of faculty, through its chairman
20 and in any other appropriate manner, shall consult and
21 advise the board of regents in matters of higher education
22 in which the faculty members of this state's colleges and
23 universities may have an interest.

24 Members of the advisory council shall be eligible to
25 succeed themselves. Members of the advisory council
26 shall serve without compensation, but shall be entitled
27 to reimbursement for actual and necessary expenses in-
28 curred in the performance of the duties of their office
29 to be paid by the state college or university served.

30 The board of regents shall furnish a secretarial service

31 to the advisory council, and the advisory council shall
32 cause to be prepared minutes of its meetings, which
33 minutes shall be available, upon request, to any faculty
34 member of this state's colleges and universities.

§18-26-9b. Advisory council of students.

1 The elected head, or president, of the student govern-
2 ment organization at each state college, community col-
3 lege, including Potomac State College of West Virginia
4 University, and university shall serve on the advisory
5 council of students which is hereby created, consisting
6 of each student government head, or president, elected
7 from each such college or university. Terms of the
8 members of such council shall be for one year and shall
9 begin on the first day of August of each year.

10 The advisory council of students shall meet at least
11 once each quarter, and shall meet during each month of
12 October, at which meeting, the council shall elect a chair-
13 man, who shall be, by virtue of his office, a member of
14 the West Virginia board of regents.

15 The advisory council of students, through its chairman
16 and in any other appropriate manner, shall consult and
17 advise the board of regents in matters of higher education
18 in which the students of this state's colleges and univer-
19 sities may have an interest.

20 Members of the advisory council shall be eligible to
21 succeed themselves. Members of the advisory council
22 shall serve without compensation, but shall be entitled to
23 reimbursement for actual and necessary expenses in-
24 curred in the performance of the duties of their office
25 to be paid by the state college or university served.

26 The board of regents shall furnish a secretarial service
27 to the advisory council, and the advisory council shall
28 cause to be prepared minutes of its meetings, which
29 minutes shall be available, upon request, to any student
30 in this state's colleges and universities.

CHAPTER 134

(Com. Sub. for S. B. 371—By Mr. Rogerson)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to repeal section seven, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four and nine, article two; sections one, one-c, three, six, nine, fourteen and eighteen, article four; sections one, two, three and eight, article four-a, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article four by adding thereto a new section, designated section one-d; relating to exemptions from compulsory coverage, charges to be assessed in fatal and total permanent disability cases, contributions to disabled workmen's relief fund by self-insured employers; to whom compensation fund disbursed; initial payment of temporary total disability benefits, method and time of payments for permanent disability; charges to be assessed for medical benefits awarded, limitation on a period for filing bills for medical services, force and effect of a finding of the occupational pneumoconiosis board, dollar limitation on expenditures for rehabilitation services, and computation of benefits.

Be it enacted by the Legislature of West Virginia:

That sections one, four and nine, article two; sections one, one-c, three, six, nine, fourteen and eighteen, article four; and sections one, two, three and eight, article four-a, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article four be further amended by adding thereto a new section, designated section one-d, all to read as follows:

Article

- 2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.**
- 4. Disability and Death Benefits.**
- 4A. Disabled Workmen's Relief Fund.**

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRATERRITORIAL COVERAGE.**

§23-2-1. Employers subject to chapter.

§23-2-4. Classification of industries; accounts; rate of premiums.

§23-2-9. Election of employer to provide own system of compensation.

§23-2-1. Employers subject to chapter.

1 The state of West Virginia and all governmental
2 agencies or departments created by it, including county
3 boards of education, political subdivisions of the state,
4 any duly incorporated volunteer fire department or
5 company and emergency service organizations organized
6 under article five, chapter fifteen of this code, and all
7 persons, firms, associations and corporations regularly
8 employing another person or persons for the purpose
9 of carrying on any form of industry, service or busi-
10 ness in this state, are employers within the meaning
11 of this chapter and are hereby required to subscribe to
12 and pay premiums into the workmen's compensation
13 fund for the protection of their employees and shall
14 be subject to all requirements of this chapter and all
15 rules and regulations prescribed by the commissioner
16 with reference to rates, classification and premium pay-
17 ment, provided that such rates will be adjusted by the
18 commissioner to reflect the demand on the compensa-
19 tion fund by the covered employer.

20 This chapter shall not apply to:

21 (1) Employers of employees in domestic services; or

22 (2) Employers of five or fewer full-time employees in
23 agricultural service; or

24 (3) Employers of employees while said employees
25 are employed without the state except in cases of tem-
26 porary employment without the state; or

27 (4) Casual employers. An employer is deemed to be a
28 casual employer when the number of his employees does
29 not exceed three and the period of employment is
30 temporary, intermittent and sporadic in nature and does
31 not exceed ten calendar days in any calendar quarter.

32 If an employer is a partnership, or sole proprietorship,

33 such employer may elect to include as an "employee"
34 within this chapter, any member of such partnership, or
35 the owner of the sole proprietorship. In the event of
36 such election, the employer shall serve upon the com-
37 missioner written notice naming the persons to be covered
38 and shall include such "employee's" remuneration for
39 premium purposes in all future payroll reports, and no
40 such partner or proprietor shall be deemed an employee
41 within the meaning of this chapter until such notice
42 has been served.

43 Notwithstanding any other provision of this chapter
44 to the contrary, whenever there are churches in a circuit
45 which employ one individual clergyman and the pay-
46 ments to such clergyman from such churches constitute
47 his full salary, such circuit or group of churches shall
48 be considered a single employer for purposes of premium
49 payment into the workmen's compensation fund.

50 Employers who are not required to subscribe to the
51 workmen's compensation fund may voluntarily choose
52 to subscribe to and pay premiums into the fund for the
53 protection of their employees and in such case shall be
54 subject to all requirements of this chapter and all rules
55 and regulations prescribed by the commissioner with
56 reference to rates, classifications and premium payments
57 and shall afford to them the protection of this chapter,
58 including section six of this article, but the failure of such
59 employers to choose to subscribe to and to pay premiums
60 into the fund shall not impose any liability upon them
61 other than such liability as would exist notwithstanding
62 the provisions of this chapter.

63 Any foreign corporation employer whose employment
64 in this state is to be for a definite or limited period which
65 could not be considered "regularly employing" within the
66 meaning of this section may choose to pay into the
67 workmen's compensation fund the premiums herein pro-
68 vided for and, at the time of making application to the
69 commissioner, such employer shall furnish a statement
70 under oath showing the probable length of time the
71 employment will continue in this state, the character
72 of the work, an estimate of the monthly payroll and any

73 other information which may be required by the com-
74 missioner. At the time of making application such em-
75 ployer shall deposit with the state compensation com-
76 missioner to the credit of the workmen's compensation
77 fund the amount required by section five of this article,
78 which amount shall be returned to the employer if his
79 application be rejected by the commissioner. Upon
80 notice to such employer of the acceptance of his appli-
81 cation by the commissioner, he shall be an employer
82 within the meaning of this chapter and subject to all of
83 its provisions.

84 Any foreign corporation employer choosing to comply
85 with the provisions of this chapter and to receive the
86 benefits hereunder shall, at the time of making applica-
87 tion to the commissioner, in addition to other requirements
88 of this chapter, furnish such commissioner with a certifi-
89 cate from the secretary of state, where such certificate
90 is necessary, showing that it has complied with all the
91 requirements necessary to enable it legally to do business
92 in this state and no application of such foreign corpora-
93 tion employer shall be accepted by the commissioner
94 until such certificate is filed.

§23-2-4. Classification of industries; accounts; rate of premiums.

1 The commissioner shall distribute into groups or classes
2 the employments subject to this chapter, in accordance
3 with the nature of the business and the degree of hazard
4 incident thereto. And the commissioner shall have power,
5 in like manner, to reclassify such industries into groups
6 or classes at any time, and to create additional groups or
7 classes. The commissioner may make necessary ex-
8 penditures to obtain statistical and other information to
9 establish the classes provided for in this section.

10 The commissioner shall keep an accurate account of
11 all money or moneys paid or credited to the compensation
12 fund, and of the liability incurred and disbursements
13 made against same; and an accurate account of all money
14 or moneys received from each individual subscriber, and
15 of the liability incurred and disbursements made on
16 account of injuries and death of the employees of each

17 subscriber, and of the receipts and incurred liability of
18 each group or class.

19 In compensable fatal and total permanent disability
20 cases, other than occupational pneumoconiosis, the amount
21 charged against the employer's account shall be such
22 sum as is estimated to be the average incurred loss of
23 such cases to the fund. The amount charged against the
24 employer's account in compensable occupational pneumo-
25 coniosis claims for total permanent disability or for death
26 shall be such sum as is estimated to be the average in-
27 curred loss of such occupational pneumoconiosis cases to
28 the fund.

29 It shall be the duty of the commissioner to fix and
30 maintain the lowest possible rates of premiums consistent
31 with the maintenance of a solvent workmen's compensa-
32 tion fund and the creation and maintenance of a reason-
33 able surplus in each group after providing for the pay-
34 ment to maturity of all liability incurred by reason of
35 injury or death to employees entitled to benefits under
36 the provisions of this chapter. A readjustment of rates
37 shall be made yearly on the first day of July, or at any
38 time the same may be necessary. The determination of
39 the lowest possible rates of premiums within the mean-
40 ing hereof and of the existence of any surplus or deficit
41 in the fund, shall be predicated solely upon the experi-
42 ence and statistical data compiled from the records and
43 files in the commissioner's office under this and prior
44 workmen's compensation laws of this state for the
45 period from the first day of June, one thousand nine
46 hundred thirteen, to the nearest practicable date prior
47 to such adjustment: *Provided*, That any expected future
48 return, in the nature of interest or income from invested
49 funds shall be predicated upon the average realization
50 from investments to the credit of the compensation fund
51 for the two years next preceding. Any reserves set up
52 for future liabilities and any commutation of benefits
53 shall likewise be predicated solely upon prior experience
54 under this and preceding workmen's compensation laws
55 and upon expected realization from investments deter-
56 mined by the respective past periods, as aforesaid.

57 The commissioner may fix a rate of premiums ap-
58 plicable alike to all subscribers forming a group or class,
59 and such rates shall be determined from the record of
60 such group or class shown upon the books of the com-
61 missioner: *Provided*, That if any group has a sufficient
62 number of employers with considerable difference in
63 their degrees of hazard, the commissioner may fix a rate
64 for each subscriber of such group, such rate to be based
65 upon the subscriber's record on the books of the com-
66 missioner for a period not to exceed three years
67 ending December thirty-first of the year preceding the
68 year in which the rate is to be effective; and the liability
69 part of such record shall include such cases as have been
70 acted upon by the commissioner during such three-year
71 period, irrespective of the date the injury was received;
72 and any subscriber in a group so rated, whose record
73 for such period cannot be obtained, shall be given a rate
74 based upon his record for any part of such period as
75 may be deemed just and equitable by the commissioner;
76 and the commissioner shall have authority to fix a rea-
77 sonable minimum and maximum for any group to which
78 this individual method of rating is applied, and to add to
79 the rate determined from the subscriber's record such
80 amount as is necessary to liquidate any deficit in the
81 schedule as to create a reasonable surplus.

82 It shall be the duty of the commissioner, when he
83 changes any rate, to notify every employer affected there-
84 by of that fact and of the new rate and when the same
85 takes effect. It shall also be his duty to furnish to each
86 employer yearly, or more often if requested by the em-
87 ployer, a statement giving the name of each of his em-
88 ployees who were paid for injury and the amounts so
89 paid during the period covered by the statement.

§23-2-9. Election of employer to provide own system of compensation.

1 Notwithstanding anything contained in this chapter,
2 employers subject to this chapter who are of sufficient
3 financial responsibility to insure the payment of com-
4 pensation to injured employees and the dependents of
5 fatally injured employees, whether in the form of pecu-

6 niary compensation or medical attention, funeral expenses
7 or otherwise as herein provided, of the value at least
8 equal to the compensation provided in this chapter, or em-
9 ployers of such financial responsibility who maintain their
10 own benefit funds, or system of compensation, to which
11 their employees are not required or permitted to contrib-
12 ute, or such employers as shall furnish bond or other
13 security to insure such payments, may, upon a finding of
14 such facts by the compensation commissioner, elect to pay
15 individually and directly, or from such benefit funds, de-
16 partment or association, such compensation and expenses
17 to injured employees or fatally injured employees' de-
18 pendants. The compensation commissioner shall require
19 security or bond from such employer, to be approved by
20 him, and of such amount as is by him considered adequate
21 and sufficient to compel or secure to such employees, or
22 their dependents, payment of the compensation and ex-
23 penses herein provided for, which shall in no event be
24 less than the compensation paid or furnished out of the
25 state workmen's compensation fund in similar cases to
26 injured employees or the dependents of fatally injured
27 employees whose employers contribute to such fund. Any
28 employer electing under this section shall on or before
29 the twentieth day of the first month of each quarter, for
30 the preceding quarter, file with the commissioner a
31 sworn statement of the total earnings of all his employees
32 subject to this chapter for such preceding quarter, and
33 shall pay into the workmen's compensation fund a sum
34 sufficient to pay his proper proportion of the expenses of
35 the administration of this chapter, and a sum sufficient
36 to pay his proper portion of the expenses for claims for
37 those employers who are delinquent in the payment of
38 premiums, and a sum sufficient to pay his fair portion of
39 the expenses of the disabled workmen's relief fund, as
40 may be determined by the commissioner. The commis-
41 sioner shall make and publish rules and regulations gov-
42 erning the mode and manner of making application, and
43 the nature and extent of the proof required to justify the
44 finding of facts by the commissioner, to consider and pass
45 upon such election by employers subject to this chapter,

46 which rules and regulations shall be general in their
47 application. Any employer subject to this chapter who
48 shall elect to carry his own risk and who has complied
49 with the requirements of this section and the rules of the
50 compensation commissioner shall not be liable to respond
51 in damages at common law or by statute for the injury or
52 death of any employee, however occurring, after such
53 election and during the period that he is allowed by the
54 commissioner to carry his own risk.

55 Any employer whose record upon the books of the
56 compensation commissioner shows a liability against the
57 workmen's compensation fund incurred on account of in-
58 jury to or death of any of his employees, in excess of pre-
59 miums paid by such employer, shall not be granted the
60 right, individually and directly or from such benefit funds,
61 department or association, to compensate his injured
62 employees and the dependents of his fatally injured
63 employees until he has paid into the workmen's compen-
64 sation fund the amount of such excess of liability over
65 premiums paid, including his proper proportion of the
66 liability incurred on account of explosions, catastrophes or
67 second injuries as defined in section one, article three of
68 this chapter, occurring within the state and charged
69 against such fund.

70 All employers who have heretofore elected, or shall
71 hereafter elect, to pay compensation and expenses directly
72 as provided in this section, shall, unless they give the
73 catastrophe and second injury security or bond hereinafter
74 after provided for, pay into the surplus fund referred to in
75 section one, article three of this chapter, upon the same
76 basis and in the same percentages, subject to the limita-
77 tions herein set forth, as funds are set aside for the main-
78 tenance of the surplus fund out of payments made by
79 premium-paying subscribers, such payments to be made
80 at the same time as hereinbefore provided with respect to
81 payment of proportion of expenses of administration. In
82 case there be a catastrophe or second injury, as defined in
83 section one, article three of this chapter, to the employees
84 of any employer making such payments, the employer

85 shall not be liable to pay compensation or expenses aris-
86 ing from or necessitated by the catastrophe or second in-
87 jury, and such compensation and expenses shall not be
88 charged against such employer, but such compensation
89 and expenses shall be paid from the surplus fund in the
90 same manner and to the same extent as in the case of
91 premium-paying subscribers.

92 If an employer elect to make payments into the surplus
93 fund as aforesaid, then the bond or other security required
94 by this section shall be of such amount as the commis-
95 sioner considers adequate and sufficient to compel or
96 secure to the employees or their dependents payment of
97 compensation and expenses, except any compensation and
98 expenses that may arise from, or be necessitated by, any
99 catastrophe or second injury, as defined in section one,
100 article three of this chapter, which last are secured by and
101 shall be paid from the surplus fund as hereinbefore pro-
102 vided.

103 If any employer elect not to make payments into the
104 surplus fund, as hereinbefore provided, then, in addition
105 to bond or security in the amount hereinbefore set forth,
106 such employer shall furnish catastrophe and second injury
107 security or bond, approved by the commissioner, in such
108 additional amount as the commissioner shall consider
109 adequate and sufficient to compel or secure payment of all
110 compensation and expenses arising from, or necessitated
111 by, any catastrophe or second injury that might thereafter
112 ensue.

113 All employers hereafter making application to carry
114 their own risk under the provisions of this section, shall
115 with such application, make a written statement as to
116 whether such employer elects to make payments as afore-
117 said into the surplus fund or not to make such payments
118 and to give catastrophe and second injury security or bond
119 hereinbefore in such case provided for.

120 All employers who have heretofore elected to carry
121 their own risk under the provisions of this section shall be
122 deemed to have elected to make payments into the surplus
123 fund unless, within thirty days after the effective date of

124 this act, they notify the commissioner in writing to the
125 contrary: *Provided*, That such employers, as have hereto-
126 fore elected, under the rules heretofore promulgated by
127 the commissioner, not to make payments into the surplus
128 fund, shall be deemed to have elected to give the catas-
129 trophe and second injury security or bond hereinbefore
130 provided for and not to make payments into the surplus
131 fund. Any catastrophe and second injury security or bond
132 heretofore given under rules and regulations promulgated
133 by the commissioner and approved by him shall be valid
134 under this section, and any election heretofore made
135 under rules and regulations of the commissioner to make
136 payments into the surplus fund shall be valid and protec-
137 tive to the person so electing from and after the date of
138 such election.

139 In any case under the provisions of this section that
140 shall require the payment of compensation or benefits by
141 an employer in periodical payments, and the nature of the
142 case makes it possible to compute the present value of all
143 future payments, the commissioner may, in his discretion,
144 at any time compute and permit or require to be paid into
145 the workmen's compensation fund an amount equal to the
146 present value of all unpaid compensation for which lia-
147 bility exists, in trust; and thereupon such employer shall
148 be discharged from any further liability upon such award,
149 and payment of the same shall be assumed by the work-
150 men's compensation fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

- §23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.
- §23-4-1c. Payment of temporary total disability benefits directly to claimant; payments of benefits during protest; right of commissioner to collect payments improperly made.
- §23-4-1d. Method and time of payments for permanent disability.
- §23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.
- §23-4-6. Classification of disability benefits.
- §23-4-9. Physical and vocational rehabilitation.

§23-4-14. Computation of benefits.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.

1 Subject to the provisions and limitations elsewhere in
2 this chapter set forth, the commissioner shall disburse
3 the workmen's compensation fund to the employees of
4 employers subject to this chapter, which employees have
5 received personal injuries in the course of and resulting
6 from their covered employment or to the dependents,
7 if any, of such employees in case death has ensued, ac-
8 cording to the provisions hereinafter made; and also for
9 the expenses of the administration of this chapter, as
10 provided in section two, article one of this chapter.

11 For the purposes of this chapter the terms "injury"
12 and "personal injury" shall include occupational pneumo-
13 coniosis and any other occupational disease, as herein-
14 after defined, and the commissioner shall likewise dis-
15 burse the workmen's compensation fund to the employees
16 of such employers in whose employment such employees
17 have been exposed to the hazards of occupational pneumo-
18 coniosis or other occupational disease and in this state
19 have contracted occupational pneumoconiosis or other
20 occupational disease, or have suffered a perceptible ag-
21 gravation of an existing pneumoconiosis or other occupa-
22 tional disease, or to the dependents, if any, of such em-
23 ployees, in case death has ensued, according to the pro-
24 visions hereinafter made: *Provided*, That compensation
25 shall not be payable for the disease of occupational
26 pneumoconiosis, or death resulting therefrom, unless the
27 employee has been exposed to the hazards of occupational
28 pneumoconiosis in the state of West Virginia over a
29 continuous period of not less than two years during the
30 ten years immediately preceding the date of his last
31 exposure to such hazards, or for any five of the fifteen
32 years immediately preceding the date of such last ex-

33 posure. An application for benefits on account of occupa-
34 tional pneumoconiosis shall set forth the name of the
35 employer or employers and the time worked for each,
36 and the commissioner may allocate to and divide any
37 charges resulting from such claim among the employers
38 by whom the claimant was employed for as much as sixty
39 days during the period of three years immediately preced-
40 ing the date of last exposure to the hazards of occupational
41 pneumoconiosis. The allocation shall be based upon the
42 time and degree of exposure with each employer.

43 For the purposes of this chapter disability or death
44 resulting from occupational pneumoconiosis, as defined
45 in the immediately succeeding sentence, shall be treated
46 and compensated as an injury by accident.

47 Occupational pneumoconiosis is a disease of the lungs
48 caused by the inhalation of minute particles of dust over
49 a period of time due to causes and conditions arising out
50 of and in the course of the employment. The term "oc-
51 cupational pneumoconiosis" shall include, but shall not
52 be limited to, such diseases as silicosis, anthracosilicosis,
53 coal worker's pneumoconiosis, commonly known as black
54 lung or miner's asthma, silico-tuberculosis (silicosis ac-
55 companied by active tuberculosis of the lungs), coal work-
56 er's pneumoconiosis accompanied by active tuberculosis
57 of the lungs, asbestosis, siderosis, anthrax and any and
58 all other dust diseases of the lungs and conditions and
59 diseases caused by occupational pneumoconiosis which
60 are not specifically designated herein meeting the defini-
61 tion of occupational pneumoconiosis set forth in the im-
62 mediately preceding sentence.

63 In determining the presence of occupational pneumo-
64 coniosis, X-ray evidence may be considered but shall not
65 be accorded greater weight than any other type of evi-
66 dence demonstrating occupational pneumoconiosis.

67 For the purposes of this chapter, occupational disease
68 means a disease incurred in the course of and resulting
69 from employment. No ordinary disease of life to which
70 the general public is exposed outside of the employment
71 shall be compensable except when it follows as an incident

72 of occupational disease as defined in this chapter. Except
73 in the case of occupational pneumoconiosis, a disease shall
74 be deemed to have been incurred in the course of or to
75 have resulted from the employment only if it is ap-
76 parent to the rational mind, upon consideration of all the
77 circumstances (1) that there is a direct causal connection
78 between the conditions under which work is performed
79 and the occupational disease, (2) that it can be seen to
80 have followed as a natural incident of the work as a
81 result of the exposure occasioned by the nature of the
82 employment, (3) that it can be fairly traced to the em-
83 ployment as the proximate cause, (4) that it does not
84 come from a hazard to which workmen would have
85 been equally exposed outside of the employment, (5)
86 that it is incidental to the character of the business
87 and not independent of the relation of employer and
88 employee, and (6) that it must appear to have had its
89 origin in a risk connected with the employment and to
90 have flowed from that source as a natural consequence,
91 though it need not have been foreseen or expected
92 before its contraction.

93 No award shall be made under the provisions of this
94 chapter for any occupational disease contracted prior to
95 the first day of July, one thousand nine hundred forty-
96 nine. An employee shall be deemed to have contracted
97 an occupational disease within the meaning of this para-
98 graph if the disease or condition has developed to such
99 an extent that it can be diagnosed as an occupational
100 disease.

101 Claims for occupational disease as hereinbefore defined,
102 except occupational pneumoconiosis, shall be processed
103 in like manner as claims for all other personal injuries.

**§23-4-1c. Payment of temporary total disability benefits
directly to claimant; payments of benefits during
protest; right of commissioner to collect payments
improperly made.**

1 Upon a finding by the commissioner that a claimant
2 has sustained a compensable injury within the meaning
3 of section one of this article, and upon proof by proper

4 physician's report, or otherwise, that disability will last
5 longer than three days as provided in section five of this
6 article, the commissioner shall immediately commence
7 payment of temporary total disability benefits to the
8 claimant in the amounts provided for in sections six
9 and fourteen of this article, without waiting for the
10 expiration of the thirty-day period during which ob-
11 jections may be filed to such findings as provided in
12 section one, article five of this chapter. The commissioner
13 shall give immediate notice to the employer of his find-
14 ings and of the commencement of such payments.

15 The commissioner shall determine whether or not
16 the claimant has sustained a compensable injury within
17 the meaning of section one of this article, and shall com-
18 mence payment of temporary total disability benefits
19 as provided herein within fifteen days of receipt of the
20 employee's or employer's report of injury, whichever
21 is received sooner, and receipt of either a proper physi-
22 cian's report or any other information necessary for a
23 determination.

24 Upon receipt of the first report of injury in a claim,
25 the commissioner shall request from the employer or
26 employers any wage information necessary for deter-
27 mining the rate of benefits to which the employee is
28 entitled. If an employer does not furnish the com-
29 missioner with this information within fifteen days from
30 the date the commissioner received the first report on
31 injury in the case, the employee shall be paid total
32 temporary disability benefits for lost time at the maxi-
33 mum rate. The commissioner shall adjust the rate pros-
34 pectively upon receipt of proper information; however,
35 notwithstanding any other provision of this section, the
36 employer shall not be entitled to a credit or refund for
37 previous overpayments caused by his failure to provide
38 proper wage information. If the employee had more than
39 one employer during the twelve months preceding the
40 injury, any overpayment resulting from the provisions of
41 this paragraph shall be charged only against the em-
42 ployer or employers who failed to supply wage informa-
43 tion.

44 Where the employer is a subscriber to the workmen's
45 compensation fund under the provisions of article three
46 of this chapter, and upon the findings aforesaid, the com-
47 missioner shall mail all workmen's compensation checks
48 paying temporary total disability benefits directly to the
49 claimant and not to the employer for delivery to the
50 claimant.

51 Where the employer has elected to carry his own
52 risk under section nine, article two of this chapter, and
53 upon the findings aforesaid, the commissioner shall im-
54 mediately issue a pay order directing the employer to
55 pay such amounts as are due the claimant for temporary
56 total disability benefits. The self-insured employer shall
57 commence such payments by mailing or delivering the
58 payments directly to the employee within ten days of
59 the date of the receipt of the pay order by the employer.
60 If the self-insured employer believes that his employee is
61 entitled to benefits, he may start payments before receiv-
62 ing a pay order from the commissioner.

63 In the event that an employer files a timely objection
64 to any finding or order of the commissioner, as provided
65 in section one, article five of this chapter, with respect
66 to the payment or continued payment of temporary total
67 disability benefits, as provided herein, the commissioner
68 shall continue to pay to the claimant such benefits during
69 the period of such disability unless it is subsequently
70 found by the commissioner that the claimant was not
71 entitled to receive the temporary total disability bene-
72 fits, or any part thereof, so paid, in which event the
73 commissioner shall, where the employer is a subscriber
74 to the fund, credit said employer's account with the
75 amount of the overpayment; and, where the employer has
76 elected to carry his own risk, the commissioner shall
77 refund to such employer the amount of the overpayment.
78 The amounts so credited to a subscriber or repaid to a
79 self-insurer shall be charged by the commissioner to the
80 surplus fund created by section one, article three of this
81 chapter. If the final decision in any case determines
82 that a claimant was not lawfully entitled to benefits
83 paid to him pursuant to a prior decision, such amount of

84 benefits so paid shall be deemed overpaid. The com-
85 missioner may recover such amount by civil action or in
86 any manner provided in this code for the collection of
87 past-due payment and shall withhold, in whole or in part,
88 as determined by the commissioner, any future benefits
89 payable to the individual and credit such amount against
90 the overpayment until it is repaid in full.

§23-4-1d. Method and time of payments for permanent disability.

1 (a) If the commissioner makes an award for per-
2 manent partial or permanent total disability, the com-
3 missioner or self-insured employer shall start payment
4 of benefits by mailing or delivering the amount due
5 directly to the employee within fifteen days from the
6 date of the award.

7 (b) If the employer files a timely protest to the
8 award, as provided in section one of article five, the
9 commissioner or self-insured employer shall continue
10 to pay to the claimant such benefits during the period
11 of such disability unless it is subsequently found
12 by the commissioner that the claimant was not entitled
13 to receive the benefits, or any part thereof, so paid, in
14 which event the commissioner shall, where the em-
15 ployer is a subscriber to the fund, credit said employer's
16 account with the amount of the overpayment; and,
17 where the employer has elected to carry his own
18 risk, the commissioner shall refund to such employer
19 the amount of the overpayment. The amounts so cred-
20 ited to a subscriber or repaid to a self-insurer shall
21 be charged by the commissioner to the surplus fund
22 created by section one, article three of this chapter. If
23 the final decision in any case determines that a claim-
24 ant was not lawfully entitled to benefits paid to him
25 pursuant to a prior decision, such amount of benefits
26 so paid shall be deemed overpaid. The commissioner
27 may recover such amount by civil action or in any man-
28 ner provided in this code for the collection of past-due
29 payment and shall withhold, in whole or in part, as
30 determined by the commissioner, any future benefits

31 payable to the individual and credit such amount against
32 the overpayment until it is repaid in full.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.

1 The commissioner shall establish, and alter from time
2 to time as he may determine to be appropriate a sched-
3 ule of the maximum reasonable amounts to be paid
4 to physicians, surgeons, hospitals or other persons,
5 firms or corporations for the rendering of treatment to
6 injured employees under this chapter.

7 The commissioner shall disburse and pay from the
8 fund for such personal injuries to such employees as
9 may be entitled thereto hereunder as follows:

10 (a) Such sums for medicines, medical, surgical, dental
11 and hospital treatment, crutches, artificial limbs and
12 such other and additional approved mechanical ap-
13 pliances and devices, as may be reasonably required.

14 (b) Payment for such medicine, medical, surgical,
15 dental and hospital treatment, crutches, artificial limbs
16 and such other and additional approved mechanical
17 appliances and devices authorized under subdivision
18 (a) hereof may be made to the injured employee,
19 or to the person, firm or corporation who or which has
20 rendered such treatment or furnished any of the items
21 specified above, or who has advanced payment for same,
22 as the commissioner may deem proper, but no such
23 payments or disbursements shall be made or awarded
24 by him unless duly verified statements on forms pre-
25 scribed by the commissioner shall be filed with the
26 commissioner within two years after the cessation of
27 such treatment, or the delivery of such appliances:
28 *Provided*, That no payment hereunder shall be made un-
29 less such verified statement shows no charge for or with
30 respect to such treatment or for or with respect to any
31 of the items specified above has been or will be made

32 against the injured employee or any other person, firm
33 or corporation, and when an employee covered under
34 the provisions of this chapter is injured in the course
35 of and as a result of his employment and is accepted
36 for medical, surgical, dental or hospital treatment, the
37 person, firm or corporation rendering such treatment
38 is hereby prohibited from making any charge or charges
39 therefor or with respect thereto against the injured
40 employee or any other person, firm or corporation
41 which would result in a total charge for the treat-
42 ment rendered in excess of the maximum amount set
43 forth therefor in the commissioner's schedule established
44 as aforesaid.

45 (c) No employer shall enter into any contracts with
46 any hospital, its physicians, officers, agents or employees
47 to render medical, dental or hospital service or to give
48 medical or surgical attention therein to any em-
49 ployee for injury compensable within the purview
50 of this chapter, and no employer shall permit or require
51 any employee to contribute, directly or indirectly, to
52 any fund for the payment of such medical, surgical, dental
53 or hospital service within such hospital for such com-
54 pensable injury. Any employer violating this section
55 shall be liable in damages to his employees as pro-
56 vided in section eight, article two of this chapter, and
57 any employer or hospital or agent or employee thereof
58 violating the provisions of this section shall be guilty
59 of a misdemeanor, and, upon conviction thereof, shall
60 be sentenced to pay a fine not exceeding one thousand
61 dollars or undergo imprisonment not exceeding one year,
62 or both.

63 (d) When an injury has been reported to the com-
64 missioner by the employer without protest, the com-
65 missioner may pay, or order an employer who or which
66 made the election and who or which received the per-
67 mission mentioned in section nine, article two of this
68 chapter to pay, within the maximum amount pro-
69 vided by schedule established by the commissioner
70 as aforesaid, bills for medical or hospital services

71 without requiring the injured employee to file an appli-
72 cation for benefits.

73 (e) The commissioner shall provide for the replace-
74 ment of artificial limbs, crutches, hearing aids, eye-
75 glasses and all other mechanical appliances provided in
76 accordance with this section which later wear out, or
77 which later need to be refitted because of the progression
78 of the injury which caused the same to be originally
79 furnished, or which are broken in the course of and as
80 a result of the employee's employment. The fund or
81 self-insured employer shall pay for these devices, when
82 needed, notwithstanding any time limits provided by
83 law.

§23-4-6. Classification of disability benefits.

1 Where compensation is due an employee under the
2 provisions of this chapter for personal injury, such com-
3 pensation shall be as provided in the following schedule:

4 (a) The expressions "average weekly wage earnings,
5 wherever earned, of the injured employee, at the date
6 of injury" and "average weekly wage in West Virginia,"
7 as used in this chapter, shall have the meaning and
8 shall be computed as set forth in section fourteen of
9 this article.

10 (b) If the injury causes temporary total disability,
11 the employee shall receive during the continuance there-
12 of weekly benefits as follows: A maximum weekly
13 benefit to be computed on the basis of sixty-six and
14 two-thirds percent of the average weekly earnings,
15 wherever earned, of the injured employee, at the date
16 of injury, not to exceed the percentage of the average
17 weekly wage in West Virginia, as follows: On or after
18 July one, one thousand nine hundred sixty-nine, forty-
19 five percent; on or after July one, one thousand nine
20 hundred seventy, fifty percent; on or after July one,
21 one thousand nine hundred seventy-one, fifty-five per-
22 cent; on or after July one, one thousand nine hundred
23 seventy-three, sixty percent; on or after July one, one
24 thousand nine hundred seventy-four, eighty percent;

25 on or after July one, one thousand nine hundred seventy-
26 five, one hundred percent.

27 The minimum weekly benefits paid hereunder shall
28 not be less than twenty-six dollars per week for in-
29 juries occurring on or after July one, one thousand
30 nine hundred sixty-nine; not less than thirty-five dollars
31 per week for injuries occurring on or after July one,
32 one thousand nine hundred seventy-one; not less than
33 forty dollars per week for injuries occurring on or after
34 July one, one thousand nine hundred seventy-three; not
35 less than forty-five dollars per week for injuries oc-
36 ccurring on or after July one, one thousand nine hundred
37 seventy-four; and for injuries occurring on or after July
38 one, one thousand nine hundred seventy-six, thirty-three
39 and one-third percent of the average weekly wage in
40 West Virginia.

41 (c) Subdivision (b) shall be limited as follows:
42 Aggregate award for a single injury causing temporary
43 disability shall be for a period not exceeding two hun-
44 dred eight weeks.

45 (d) If the injury causes permanent total disability,
46 benefits shall be payable during the remainder of life
47 at the maximum or minimum weekly benefits as pro-
48 vided in subdivision (b) of this section for temporary
49 total disability. A permanent disability of eighty-five
50 percent or more shall be deemed a permanent total dis-
51 ability for the purpose of this section.

52 (e) If the injury causes permanent disability less
53 than permanent total disability, the percentage of dis-
54 ability to total disability shall be determined and the
55 award computed on the basis of four weeks compensa-
56 tion for each percent of disability determined, at the
57 following maximum or minimum benefit rates: Sixty-
58 six and two-thirds percent of the average weekly earn-
59 ings, wherever earned, of the injured employee, at the
60 date of injury, not to exceed the percentage of the
61 average weekly wage in West Virginia, as follows: On
62 or after July one, one thousand nine hundred sixty-nine,
63 forty-five percent; on or after July one, one thousand

64 nine hundred seventy, fifty percent; on or after July
65 one, one thousand nine hundred seventy-one, fifty-five
66 percent; on or after July one, one thousand nine hun-
67 dred seventy-three, sixty percent; on or after July one,
68 one thousand nine hundred seventy-five, sixty-six and
69 two-thirds percent.

70 The minimum weekly benefit under this subdivision
71 shall be as provided in subdivision (b) of this section
72 for temporary total disability.

73 (f) If the injury results in the total loss by severance
74 of any of the members named in this subdivision, the
75 percentage of disability shall be determined by the com-
76 missioner, with the following table establishing the
77 minimum percentage of disability. In determining the
78 percentage of disability, the commissioner may be guided
79 by but shall not be limited to the disabilities enumer-
80 ated in the following table, and in no event shall the
81 disability be less than that specified in the following
82 table:

83 The loss of a great toe shall be considered a ten per-
84 cent disability.

85 The loss of a great toe (one phalanx) shall be con-
86 sidered a five percent disability.

87 The loss of other toes shall be considered a four per-
88 cent disability.

89 The loss of other toes (one phalanx) shall be con-
90 sidered a two percent disability.

91 The loss of all toes shall be considered a twenty-five
92 percent disability.

93 The loss of forepart of foot shall be considered a thirty
94 percent disability.

95 The loss of foot shall be considered a thirty-five per-
96 cent disability.

97 The loss of a leg shall be considered a forty-five percent
98 disability.

99 The loss of thigh shall be considered a fifty percent
100 disability.

101 The loss of thigh at hip joint shall be considered a sixty
102 percent disability.

103 The loss of a little or fourth finger (one phalanx)
104 shall be considered a three percent disability.

105 The loss of little or fourth finger shall be considered
106 a five percent disability.

107 The loss of ring or third finger (one phalanx) shall
108 be considered a three percent disability.

109 The loss of ring or third finger shall be considered a
110 five percent disability.

111 The loss of middle or second finger (one phalanx) shall
112 be considered a three percent disability.

113 The loss of middle or second finger shall be consid-
114 ered a seven percent disability.

115 The loss of index or first finger (one phalanx) shall be
116 considered a six percent disability.

117 The loss of index or first finger shall be considered a
118 ten percent disability.

119 The loss of thumb (one phalanx) shall be considered
120 a twelve percent disability.

121 The loss of thumb shall be considered a twenty per-
122 cent disability.

123 The loss of thumb and index finger shall be considered
124 a thirty-two percent disability.

125 The loss of index and middle finger shall be con-
126 sidered a twenty percent disability.

127 The loss of middle and ring finger shall be considered
128 a fifteen percent disability.

129 The loss of ring and little finger shall be considered a
130 ten percent disability.

131 The loss of thumb, index and middle finger shall be
132 considered a forty percent disability.

133 The loss of index, middle and ring finger shall be
134 considered a thirty percent disability.

135 The loss of middle, ring and little finger shall be con-
136 sidered a twenty percent disability.

137 The loss of four fingers shall be considered a thirty-
138 two percent disability.

139 The loss of hand shall be considered a fifty percent
140 disability.

141 The loss of forearm shall be considered a fifty-five
142 percent disability.

143 The loss of arm shall be considered a sixty percent dis-
144 ability.

145 The total and irrecoverable loss of the sight of one
146 eye shall be considered a thirty-three percent disability.
147 For the partial loss of vision in one, or both eyes, the
148 percentages of disability shall be determined by the
149 commissioner, using as a basis the total loss of one
150 eye.

151 The total and irrecoverable loss of the hearing of one
152 ear shall be considered a fifteen percent disability, and
153 the injured employee shall be entitled to compensation
154 for a period of sixty weeks. The total and irrecoverable
155 loss of hearing of both ears shall be considered a forty-
156 five percent disability, and the injured employee shall
157 be entitled to compensation for a period of one hundred
158 eighty weeks.

159 For the partial loss of hearing in one, or both ears,
160 the percentage of disability shall be determined by the
161 commissioner, using as a basis the total loss of hearing
162 in both ears.

163 Should a claimant sustain a compensable injury which
164 results in the total loss by severance of any of the bodily
165 members named in this subdivision, die from sickness
166 or noncompensable injury before the commissioner
167 makes the proper award for such injury, the commis-
168 sioner shall make such award to claimant's dependents
169 as defined in this chapter, if any; such payment to be
170 made in the same installments that would have been
171 paid to claimant if living: *Provided*, That no payment

172 shall be made to any widow of such claimant after her
173 remarriage, and that this liability shall not accrue to
174 the estate of such claimant and shall not be subject to
175 any debts of, or charges against, such estate.

176 (g) Should a claimant to whom has been made a
177 permanent partial award of from one percent to eighty-
178 four percent, both inclusive, die from sickness or non-
179 compensable injury, the unpaid balance of such award
180 shall be paid to claimant's dependents as defined in this
181 chapter, if any; such payment to be made in the same
182 installments that would have been paid to claimant if
183 living: *Provided*, That no payment shall be made to any
184 widow of such claimant after her remarriage, and that
185 this liability shall not accrue to the estate of such claim-
186 ant and shall not be subject to any debts of, or charges
187 against, such estate.

188 (h) For the purposes of this chapter, a finding of
189 the occupational pneumoconiosis board shall have the
190 force and effect of an award.

191 (i) The award for permanent disabilities intermedi-
192 ate to those fixed by the foregoing schedule and perma-
193 nent disability of from one percent to eighty-four per-
194 cent shall be the same proportion and shall be computed
195 and allowed by the commissioner.

196 (j) The percentage of all permanent disabilities other
197 than those enumerated in subdivision (f) of this section
198 shall be determined by the commissioner, and awards
199 made in accordance with the provisions of subdivision
200 (d) or (e) of this section. Where there has been an
201 injury to a member as distinguished from total loss by
202 severance of that member, the commissioner in deter-
203 mining the percentage of disability may be guided by
204 but shall not be limited to the disabilities enumerated
205 in subdivision (f) of this section.

206 (k) Compensation payable under any subdivision of
207 this section shall not exceed the maximum nor be less
208 than the weekly benefits specified in subdivision (b) of
209 this section.

210 (l) Temporary total disability benefits payable under
211 subdivision (b) of this section shall not be deductible
212 from permanent partial disability awards payable under
213 subdivision (e) or (f) of this section. Compensation,
214 either total temporary or permanent partial, under this
215 section shall be payable only to the injured employee
216 and the right thereto shall not vest in his or her estate,
217 except that any unpaid compensation which would have
218 been paid or payable to the employee up to the time of
219 his death, if he had lived, shall be paid to the dependents
220 of such injured employee if there be such dependents at
221 the time of death.

222 (m) The following permanent disabilities shall be con-
223 clusively presumed to be total in character:

224 Loss of both eyes or the sight thereof.

225 Loss of both hands or the use thereof.

226 Loss of both feet or the use thereof.

227 Loss of one hand and one foot or the use thereof.

228 In all other cases permanent disability shall be deter-
229 mined by the commissioner in accordance with the facts
230 in the case, and award made in accordance with the pro-
231 visions of subdivision (d) or (e).

232 (n) A disability which renders the injured employee
233 unable to engage in substantial gainful activity requiring
234 skills or abilities comparable to those of any gainful
235 activity in which he has previously engaged with some
236 regularity and over a substantial period of time shall be
237 considered in determining the issue of total disability.

§23-4-9. Physical and vocational rehabilitation.

1 In cases where an employee has sustained a permanent
2 disability, or has sustained injuries likely to result in per-
3 manent disability, and such fact has been determined by
4 the commissioner, and the employee can be physically and
5 vocationally rehabilitated and returned to remunerative
6 employment by vocational training, by the use of crutches,
7 artificial limbs, or other approved mechanical ap-
8 pliances, or by medicines, medical, surgical, dental or

9 hospital treatment, the commissioner shall forthwith, after
10 due notice to the employer, expend such an amount as
11 may be necessary for the aforesaid purposes: *Provided*,
12 That such expenditure for vocational rehabilitation shall
13 not exceed ten thousand dollars for any one injured em-
14 ployee: *Provided, however*, That no payment shall be
15 made for such purposes as provided by this section unless
16 authorized by the commissioner prior to the rendering
17 of such physical or vocational rehabilitation.

18 In every case in which the commissioner shall order
19 physical or vocational rehabilitation of a claimant as pro-
20 vided herein, the claimant shall, during the time he is
21 receiving any vocational rehabilitation or rehabilitative
22 treatment that renders him totally disabled during the
23 period thereof, be compensated on a temporary total dis-
24 ability basis for such period.

§23-4-14. Computation of benefits.

1 The average weekly wage earnings, wherever earned, of
2 the injured person at the date of injury, and the average
3 weekly wage in West Virginia as determined by the
4 commissioner of employment security, in effect at the date
5 of injury, shall be taken as the basis upon which to com-
6 pute the benefits.

7 In cases involving occupational pneumoconiosis or other
8 occupational diseases, the "date of injury" shall be the
9 date of the last exposure to the hazards of occupational
10 pneumoconiosis or other occupational diseases.

11 In computing benefits payable on account of occupa-
12 tional pneumoconiosis, the commissioner shall deduct the
13 amount of all prior workmen's compensation benefits paid
14 to the same claimant on account of silicosis, but a prior
15 silicosis award shall not, in any event, preclude an award
16 for occupational pneumoconiosis otherwise payable under
17 this article.

18 The expression "average weekly wage earnings, wher-
19 ever earned, of the injured person, at the date of injury,"
20 within the meaning of this chapter, shall be computed

21 based upon the daily rate of pay at the time of
22 the injury or upon the average pay received dur-
23 ing the two months, six months or twelve months
24 immediately preceding the date of the injury, whichever
25 is most favorable to the injured employee.

26 The expression "average weekly wage in West Vir-
27 ginia," within the meaning of this chapter, shall be the
28 average weekly wage in West Virginia as determined by
29 the commissioner of employment security in accordance
30 with the provisions of sections ten and eleven, article six,
31 chapter twenty-one-a of the code of West Virginia, one
32 thousand nine hundred thirty-one, as amended, and other
33 applicable provisions of said chapter twenty-one-a.

34 In any claim for injuries, including occupational pneu-
35 moconiosis and other occupational diseases, occurring on
36 or after July one, one thousand nine hundred seventy-one,
37 any award for temporary total, permanent partial or
38 permanent total disability benefits or for dependent bene-
39 fits, shall be paid at the weekly rates or in the monthly
40 amount in the case of dependent benefits applicable to
41 the claimant therein in effect on the date of such injury.
42 If during the life of such award for temporary total,
43 permanent partial or permanent total disability benefits
44 or for dependent benefits, the weekly rates or the monthly
45 amount in the case of dependent benefits are increased or
46 decreased, the claimant shall receive such increased or
47 decreased benefits beginning as of the effective date of
48 said increase or decrease.

**§23-4-18. Mode of paying benefits generally; exemptions of
compensation from legal process.**

1 Except by this section provided compensation shall be
2 paid only to such employees or their dependents, and
3 shall be exempt from all claims of creditors and from any
4 attachment, execution or assignment other than compen-
5 sation to counsel for legal services, under the provisions
6 of, and subject to the limitations contained in section five,
7 article five of this chapter. Payments may be made in
8 such periodical installments as may seem best to the

9 commissioner in each case but in no event less frequently
10 than semimonthly for any temporary award and monthly
11 for any permanent award. Payment for permanent disa-
12 bility shall be paid on or before the third day of the
13 month in which they are due. In all cases where compen-
14 sation is awarded or increased, the amount thereof shall
15 be calculated and paid from the date of disability.

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

§23-4A-1. Disabled workmen's relief fund created.

§23-4A-2. To whom benefits paid.

§23-4A-3. Computation of benefits.

§23-4A-8. Disabled workmen's relief fund; how funded.

§23-4A-1. Disabled workmen's relief fund created.

1 For the relief of persons who are receiving benefits
2 pursuant to a permanent total disability award in amounts
3 less than two hundred twenty-four dollars per month,
4 and for the relief of widows who are receiving benefits on
5 account of the death of an employee in amounts less than
6 two hundred ten dollars per month, and for the relief of
7 other persons who are receiving dependents' benefits
8 on account of the death of an employee in amounts less
9 than the specific monetary amounts set forth in
10 section ten, article four of this chapter and in effect
11 as of July one, one thousand nine hundred seventy-
12 three, there is hereby created a separate fund to be
13 known as the "Disabled Workmen's Relief Fund," which
14 fund shall consist of such sums as are from time to time
15 made available to carry out the objects and purposes
16 of this article. Said fund shall be in the custody of
17 the state treasurer and disbursements therefrom shall
18 be made upon requisition signed by the commissioner
19 to those persons entitled to participate therein and in
20 such amounts to each participant as is provided in sec-
21 tion three of this article.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workmen's
2 relief fund, an individual must be receiving workmen's
3 compensation benefits by virtue of and under the laws
4 of this state in amounts less than those set forth in

5 section one of this article, and be receiving such benefits
6 under a permanent total disability award or be re-
7 ceiving such benefits because of the death of an employee.

§23-4A-3. Computation of benefits.

1 Each individual entitled to participate in the disabled
2 workmen's relief fund shall be entitled to receive pay-
3 ments without application (except that an application
4 shall be required under section five of this article) from
5 said fund of an amount equal to the difference between
6 the amounts set forth in section one of this article, and
7 the amount said individual is in fact receiving by vir-
8 tue of and under the laws of this state. The first
9 such payment shall be made concurrently with the
10 payment to him of workmen's compensation on August
11 one, one thousand nine hundred seventy-six and subse-
12 quent payments shall be made during the period there-
13 after in which such participant shall be entitled to
14 workmen's compensation benefits by virtue of and under
15 the laws of this state.

§23-4A-8. Disabled workmen's relief fund; how funded.

1 For the purpose of carrying out the provisions of this
2 article, the commissioner shall transfer annually, out
3 of the interest earned during the previous year on in-
4 vestments held by the workmen's compensation fund,
5 and out of the amount assessed against self-insured em-
6 ployers pursuant to the provisions of article two,
7 section nine, an amount estimated by the commis-
8 sioner to be necessary to carry out the provisions of
9 this article for one year.

10 Such money shall be deposited by the commissioner
11 in the disabled workmen's relief fund, as required by
12 this article.

CHAPTER 135

(H. B. 736—By Mr. Harman and Mr. Milleson)

[Passed February 25, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy-two, relating to authorizing the creation of the Potomac Highlands Airport Authority, specifying its powers and duties, membership, tax exemption for its property, funds and obligations, permitting the Mineral County commission, and county commissions of West Virginia counties contiguous to Mineral County, to enter into intergovernmental agreements with the state of Maryland, Allegheny County, Maryland, Maryland counties contiguous to Allegheny County, the city of Cumberland, Maryland, and other Maryland municipalities in such Maryland counties pertaining to the operation of an airport situated in Mineral County, West Virginia.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy-two, be amended and reenacted to read as follows:

POTOMAC HIGHLANDS AIRPORT AUTHORITY.

- §1. County commissions empowered to enter into intergovernmental agreements with Potomac Highlands Airport Authority.
- §2. Potomac Highlands Airport Authority authorized.
- §3. Authority a corporation.
- §4. Purposes.
- §5. Members of authority.
- §6. Powers.
- §7. Participation.
- §8. Funds and accounts.
- §9. Property and obligations of authority exempt from taxation.
- §10. Sale or lease of property.
- §11. Employees to be covered by workmen's compensation.
- §12. Liberal construction of act.
- §13. Provisions severable.
- §14. When act goes into effect.

§1. County commissions empowered to enter into intergovernmental agreements with Potomac Highlands Airport Authority.

1 The county commissions of Mineral County and of counties
2 contiguous to Mineral County, and the governing bodies of
3 municipalities situate in such counties, are hereby authorized
4 and empowered to enter into intergovernmental agreements
5 with the state of Maryland, Allegheny County, Maryland, and
6 Maryland counties contiguous to Allegheny County, Cum-
7 berland, Maryland, and other municipalities situate in such
8 Maryland counties, and the Potomac Highlands Airport
9 Authority regarding the operation and use of the Cumberland
10 municipal airport, and situate in Mineral County, West Vir-
11 ginia. Such agreements shall be reciprocal in nature and may
12 include, but shall not be limited to, conditions governing the
13 operation, use, maintenance of airport facilities, taxation of
14 aircraft owned by Maryland residents and others, and user fees.

§2. Potomac Highlands Airport Authority authorized.

1 The county commissions of Mineral County and other
2 counties contiguous thereto, and the governing bodies of
3 municipalities situate in such counties, or any one or more
4 of them, jointly and severally, are hereby authorized to
5 create and establish, with proper governmental units of the
6 state of Maryland, Allegheny County, Maryland, and other
7 counties contiguous to Allegheny County, Cumberland, Mary-
8 land, and other municipalities situate in such Maryland
9 counties, or any one or more of them, a public agency to be
10 known as the "Potomac Highlands Airport Authority" in the
11 manner and for the purposes hereinafter set forth.

§3. Authority a corporation.

1 The authority when created, and the members thereof, shall
2 constitute a public corporation and as such shall have perpetual
3 succession, may contract and be contracted with, sue and
4 be sued, and have and use a common seal.

§4. Purposes.

1 The authority is hereby authorized and empowered to
2 acquire, equip, maintain, and operate an airport or landing
3 field and appurtenant facilities in Mineral County on the

- 4 Potomac River near Ridgeley, West Virginia, to serve the
5 area in which it is located.

§5. Members of authority.

1 The management and control of the Potomac Highlands
2 Airport Authority, its property, operations, business and affairs
3 shall be lodged in a board of seven or more persons who
4 shall be known as members of the authority and who shall
5 be appointed for terms of three years each by such counties,
6 municipalities or other governmental units situate in West
7 Virginia and Maryland as contribute to the funds of the
8 authority, in such proportion between such states and such
9 counties, municipalities and units, and in such manner, as
10 may from time to time be provided in the bylaws adopted by
11 the authority: *Provided*, That the first board shall be
12 appointed as follows:

13 (1) The county commission of Mineral County shall
14 appoint two members for terms of two and three years,
15 respectively;

16 (2) The governing official or body of the municipality
17 of Cumberland, Maryland, shall appoint three members for
18 terms of one, two and three years, respectively;

19 (3) The governing official or body of Allegheny County,
20 Maryland, shall appoint two members for terms of one and two
21 years, respectively.

§6. Powers.

1 The Potomac Highlands Airport Authority is hereby given
2 power and authority as follows:

3 (1) To make and adopt all necessary bylaws, rules and
4 regulations for its organization and operations not inconsistent
5 with law;

6 (2) To take all legal actions necessary or desirable in
7 relation to the general operation, governance, capital ex-
8 pansion, management and protection of the Cumberland
9 municipal airport;

10 (3) To increase the number of members of the authority,

11 and to set the terms of office and appointment procedures
12 for such additional members;

13 (4) To elect its own officers, to appoint committees and
14 to employ and fix the compensation for personnel necessary
15 for its operation;

16 (5) To enter into contracts with any person, firm or
17 corporation, and generally to do anything necessary for the
18 purpose of acquiring, equipping, expanding, maintaining and
19 operating an airport as aforesaid;

20 (6) To delegate any authority given to it by law to any
21 of its officers, committees, agents or employees;

22 (7) To apply for, receive and use grants in aid, donations
23 and contributions from any sources;

24 (8) To take or acquire lands by purchase, holding title
25 thereto in its own name;

26 (9) To purchase, own, hold, sell and dispose of per-
27 sonal property and to sell and dispose of any real estate which
28 it may have acquired and may determine not to be needed
29 for its purposes;

30 (10) To borrow money;

31 (11) To extend its funds in the execution of the powers
32 and authority hereby given;

33 (12) To take all necessary steps to provide for proper
34 police protection at the airport; and

35 (13) To inventory airplanes and other personal property
36 at the airport and provide the assessor of Mineral County
37 and other proper governmental officials with full particulars in
38 regard thereto.

§7. Participation.

1 The county commissions of Mineral County and of counties
2 contiguous thereto, and the governing bodies of municipalities
3 situate in such counties, or any one or more of them, jointly
4 and severally, are hereby authorized and empowered to ap-
5 point members of the said authority and to contribute to the

6 cost of acquiring, equipping, maintaining and operating the
7 said airport and appurtenant facilities.

8 Any of the foregoing county commissions or municipal
9 corporations is hereby authorized and empowered to transfer
10 and convey to the said authority property of any kind here-
11 tofore acquired by said county commission or municipal
12 corporation for airport purposes.

§8. Funds and accounts.

1 Contributions may be made to the authority from time to
2 time by the various bodies contributing to its funds and
3 shall be deposited in such bank or banks as a majority of
4 the members of the authority may direct and shall be with-
5 drawn therefrom in such manner as the authority may direct.

6 The authority shall keep strict account of all of its receipts
7 and expenditures and shall make quarterly reports to the
8 public and private bodies contributing to its funds containing
9 an itemized account of its operations in the preceding quarter.
10 The accounts of the authority shall be regularly examined by
11 the state tax commissioner in the manner required by article
12 nine, chapter six of the code of West Virginia.

§9. Property and obligations of authority exempt from taxation.

1 The authority shall be exempt from the payment of any
2 taxes or fees to the state of West Virginia or any subdivisions
3 thereof or to any officer or employee of the state or other
4 subdivision thereof. The property of the authority shall be
5 exempt from all local and municipal taxes. Notes, debentures
6 and other evidence of indebtedness of the authority are de-
7 clared to be issued for a public purpose and to be public
8 instrumentalities, and, together with interest thereon, shall be
9 exempt from taxes.

§10. Sale or lease of property.

1 In the event all of the public corporations contributing to the
2 funds of the authority shall so determine the authority shall
3 make sale of all of its properties and assets and distribute
4 the proceeds thereof among those contributing to its funds; or
5 in the event such of the supporting corporations contributing
6 a majority of the funds of said authority shall so determine the

7 authority may lease all of its property and equipment upon such
8 terms and conditions as the authority may fix and determine.

§11. Employees to be covered by workmen's compensation.

1 All employees of the authority eligible thereto shall be
2 deemed to be within the workmen's compensation act of
3 West Virginia and premiums on their compensation shall be
4 paid by the authority as required by law.

§12. Liberal construction of act.

1 It is the purpose of this act to provide for the maintenance
2 and operation of an airport in a prudent and economical
3 manner and this act shall be liberally construed as giving
4 to the authority full and complete power reasonably required
5 to give effect to the purposes hereof. The provisions of this
6 act are in addition to and not in derogation of any power
7 existing in the county commissions and municipal corporations
8 herein named under any constitutional, statutory or charter
9 provisions which they or either of them may now have, or
10 may hereafter acquire or adopt.

§13. Provisions severable.

1 The several sections and provisions of this act are severable,
2 and if any section or provision hereof shall be held uncon-
3 stitutional, all the remaining sections and provisions of the
4 act shall nevertheless remain valid.

§14. When act goes into effect.

1 This act shall become effective immediately upon the enact-
2 ment by the state of Maryland of legislation, similar in nature
3 to this act, providing for the Potomac Highlands Airport
4 Authority.

RESOLUTIONS

CONCURRENT RESOLUTIONS

(Only resolutions of general interest are included herein)

Authorizing and continuing legislative interim studies:

(Since these resolutions take the same general form, they are listed herein by number showing the subject of studies authorized thereby. They may be found in the House and Senate Journals of the session, and are indexed in the Journals under tabular indices of House and Senate Concurrent Resolutions.)

Senate Concurrent

11. Employment Classification, Salary, Employment Benefits, etc., of Persons Receiving Compensation From the State
27. Retirement Systems for Municipal Firemen and Policemen
29. Coal Mine Health and Safety Laws
30. Civil Procedure, Coal Mine Health and Safety Laws, Health and Social Services of the State, Higher Education, Juvenile Law, Park and Recreational Systems and Facilities, Public Safety Administration, and Tax Structure of the State and Revenue Requirements of Municipalities

HOUSE CONCURRENT RESOLUTION NO. 44

(By Mr. Lohr, Mr. Christian, Mr. McNeely,
Mr. Shiflet and Mr. Wells)

[Adopted March 17, 1976]

Memorializing the Congress of the United States to recognize the extreme hazardous and unsafe conditions of the West Virginia Turnpike and urging it to appropriate or authorize the release of federal highway construction funds sufficient to meet the federal government's share of the cost of upgrading the turnpike to interstate standards.

WHEREAS, The West Virginia Turnpike is becoming the most important section of the interstate highway system of this nation because it is an integral part of two of its major trade routes. Agri-

cultural products, oil products and raw materials from the west and the midwest traverse interstate route sixty-four to the eastern manufacturing and population centers while machinery and products of commerce are transported back to the west and midwest, and produce and citrus products are transported northward along interstate highway seventy-seven and seventy-nine to the highly populated northern midwest and northwest and many families travel these highways southward to vacations in West Virginia and other areas of the south; and

WHEREAS, These important trade and travel routes are almost complete, but are connected by the most atrocious highway in the country—the West Virginia Turnpike which stretches for 88 miles and which was the scene last year of 199 traffic accidents, 23 fatalities and 76 injuries; and

WHEREAS, The West Virginia Turnpike is a two lane highway with poor warning signals and signs, deteriorating bridges, poor pavement conditions and treacherous curves; and

WHEREAS, The people of the State of West Virginia are willing and waiting to contribute their share of the cost of upgrading this roadway to interstate standards; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby memorialized to recognize the extreme hazardous and unsafe conditions of the West Virginia Turnpike and urge it to appropriate or authorize the release of federal highway construction funds sufficient to meet the federal government's share of the cost of upgrading this turnpike to interstate standards; and, be it

Further Resolved, That the Clerk forward a copy of this resolution to the clerk of the United States Senate and the clerk of the House of Representatives and West Virginia's representatives in the Congress.

HOUSE CONCURRENT RESOLUTION NO. 50

(By Mrs. Neal)

[Adopted March 10, 1976]

Directing the Forest Management Review Commission to encourage, direct and coordinate a study and joint effort by the Department of Natural Resources, the Department of Agriculture, West

Virginia University and other appropriate state and federal agencies to determine the cause, treatment and eradication of chestnut blight.

WHEREAS, Native chestnuts in West Virginia often exceeded a height of one hundred feet before the advent of the chestnut blight; and

WHEREAS, The chestnut is a valuable hardwood tree and food source which because of the blight has become an endangered species; and

WHEREAS, Concerned private persons and groups are putting forth commendable efforts to cultivate, treat and proliferate the chestnut tree; and

WHEREAS, Radiation is one of approximately five techniques currently being used in efforts to develop blight resistant trees; and

WHEREAS, This process changes or modifies the plant cells to produce a mutation which is expected ultimately to produce a blight free or blight resistant American chestnut; and

WHEREAS, Private persons and groups are not financially and otherwise equipped to wage the research needed to conquer the chestnut blight; therefore, be it

Resolved by the Legislature of West Virginia:

That the Forest Management Review Commission encourage, direct and coordinate a study and joint effort by the Department of Natural Resources, the Department of Agriculture, West Virginia University and other appropriate state and federal agencies to eliminate the chestnut blight; and, be it

Further Resolved, That the Commission is hereby authorized to meet with officials of the United States Department of Agriculture, United States Forest Service, West Virginia Congressional Delegation and state agencies, as aforesaid; and, be it

Further Resolved, That the expenses necessary to encourage, direct and coordinate these efforts shall be paid from legislative appropriations by the Joint Committee on Government and Finance; and, be it

Further Resolved, That the Clerk of the House be directed to cause copies of this resolution to be forwarded to the United States Department of Agriculture, United States Forest Service, West

Virginia Congressional Delegation and the state agencies, as aforesaid.

HOUSE CONCURRENT RESOLUTION NO. 56

(By Mr. Speaker, Mr. McManus, and Mr. Shiflet)

[Adopted March 11, 1976]

Extending the regular session of the Legislature, 1976.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the regular session of the Legislature, 1976, is hereby extended until midnight, the 30th day of June, 1976, pursuant to Section 22, Article 6 of the Constitution of the State of West Virginia, for consideration of the budget, budget bills, supplementary appropriation bills, conference committee reports on bills or joint resolutions in conference on adjournment of the Senate and House of Delegates on March 13, 1976, and action on those conference committee reports and bills and joint resolutions on which conference committee reports are received; for reconsideration of any bills vetoed or disapproved by the Governor and any budget bill or supplementary appropriation bill vetoed, disapproved or reduced by the Governor as to any item or part or as to the entire bill; and for consideration of or action upon bills and resolutions introduced on or before the 50th day of the regular session of the Legislature or on the official calendar of the Senate or House of Delegates on their adjournment on March 13, 1976.

HOUSE CONCURRENT RESOLUTION NO. 62

(By Mr. Speaker, Mr. McManus)

[Adopted March 17, 1976]

Providing for an adjournment of the Legislature until the 14th day of May, 1976 and for reconvening prior thereto by the Committees on Rules of the Senate and of the House of Delegates.

Resolved by the Legislature of West Virginia:

That when adjournment is taken by the two Houses of the Legislature at the close of their respective sessions on the 17th day of March, 1976, such adjournment shall be until the 14th day of May, 1976, at 6:00 P.M., pursuant to Article VI, Section 23 of the Constitution of the State of West Virginia, unless the Legislature is called to reconvene prior thereto by a majority vote of the Committee on Rules of the Senate and by a majority vote of the Committee on Rules of the House of Delegates, in which event such adjournment shall be until the date and time of reconvening specified by said Committees; and that the Legislature hereby expressly authorizes said Committees on Rules, to which this authority is hereby expressly delegated, to call the Legislature to reconvene this session prior to the 14th day of May, 1976, as herein provided.

SENATE CONCURRENT RESOLUTION NO. 20

(By Mr. Brotherton, Mr. President, and Mr. Rogerson)

[Adopted March 17, 1976]

Approval of a program for observation of the West Virginia Legislature by undergraduate college and university students.

WHEREAS, There is a growing interest among undergraduate college and university students to visit the West Virginia Legislature during its annual regular sessions to observe and to learn more about the legislative branch of state government; and

WHEREAS, These students and the Legislature can best receive real benefits from these visitations only through an organized program; and

WHEREAS, The Joint Committee on Government and Finance has reviewed and approved a tentative proposal for such a program with participation open to all public and private universities, colleges and community colleges in the State and with legislative participation, along with representatives at the institutions, in planning, coordinating and conducting this annual program, contemplating visits by 50 students divided between two one-week periods; therefore, be it

Resolved by the Legislature of West Virginia:

That approval is hereby expressed for a program to facilitate observation of future regular sessions of the West Virginia Legislature by selected undergraduate students attending West Virginia's public and private universities, colleges and community colleges and that the Joint Committee on Government and Finance is authorized to cooperate with these institutions in organizing and implementing this program.

SENATE CONCURRENT RESOLUTION NO. 22

(By Mr. Brotherton, Mr. President, Mr. Palumbo,
Mr. Galperin and Mr. Savilla)

[Adopted March 4, 1976]

Designating the period from the evening of July 2 through July 3, 1976, as the official West Virginia Capital City Bicentennial Celebration and inviting all West Virginia residents to attend such.

WHEREAS, The Charleston-Kanawha Valley Bicentennial Commission, in cooperation with several civic-minded organizations, has arranged an extensive series of festive events for the weekend of July 2-5, 1976, the weekend of our Nation's Bicentennial Celebration; and

WHEREAS, Events of particular interest to the State of West Virginia as a whole will be occurring in Charleston on Friday and Saturday, July 2 and 3; and

WHEREAS, These events begin the evening of July 2 with a colonial dress ball featuring the Glenn Miller Orchestra, and continue Saturday, July 3, with: (1) A 10:30 a.m. parade featuring bands and floats from across the State and Senior United States Senator Jennings Randolph as Parade Marshal; (2) a 2:30 p.m. ceremony commemorating the Declaration of Independence featuring Sissy Farenthold, Chairperson of the National Women's Political Caucus, a Vice Presidential nominee in 1972, and President of Wells College in Aurora, New York, as the guest speaker and Judge Thornton Berry, Jr., of the West Virginia Supreme Court of Appeals reading and commenting on the Declaration of Independence; (3) the 8:00

p.m. revival of the "Rhododendron North-South Football Classic," featuring outstanding high school football players from throughout the State; and

WHEREAS, The Kanawha County Delegation to the West Virginia Legislature desires that all West Virginians be invited to the Capital City of Charleston for these events; therefore, be it

Resolved by the Legislature of West Virginia:

That the period from the evening of July 2 through July 3, 1976, be designated as the official West Virginia Capital City Bicentennial Celebration, and that all West Virginia residents are hereby invited to attend these events; and, be it

Further Resolved, That the Clerk forward a copy of this resolution to the Charleston-Kanawha Valley Bicentennial Commission.

LEGISLATURE OF WEST VIRGINIA

ACTS

EXTRAORDINARY SESSION, 1975

CHAPTER 1

(Com. Sub. for H. B. 149—By Mr. Seibert)

[Passed August 5, 1975; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all General Revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Governor's Office, McMechen and Stonewood Relief, Account No. 127, an act, supplementing Enrolled Committee Substitute for Senate Bill No. 23, enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenues, available cash balance, and estimated expirations, as provided by the Governor in the Executive Budget Document heretofore enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of funds available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Legislature, after enactment of the budget bill for the fiscal year 1975-76, enacted certain supplementary appropriation bills to various accounts of state spending units, which appropriations were well within the estimates of revenue, as reduced by the appropriations in the budget bill; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of \$47,606,475, as substantiated by his estimates submitted in the General Revenue Financial Statement of the Governor on July 29, 1975, amending and supplementing the budget document, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following new Account 127, the designated line item, and language of appropriation.

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EXECUTIVE

4 12-A—*Governor's Office—McMechen and Stonewood Relief*

5 Acct. No. 127

6 For relief and aid to the City of McMechen, W. Va., and the
7 Town of Stonewood, W. Va., resulting from state natural
8 disasters and presently not eligible for federal disaster
9 funding, there is hereby appropriated for such purpose the
10 sum of \$750,000 for the City of McMechen, W. Va., and
11 the sum of \$200,000 for the Town of Stonewood, W. Va.
12 Such funds to be used within the boundaries of the City of
13 McMechen, W. Va., and the Town of Stonewood, W. Va.,
14 or the immediate vicinities thereof, for correction of land-
15 slides, earth movement, mud flow and drainage.

16 Any or all of the above appropriation may be expended
17 solely or in conjunction with any federal funds or federal
18 aid programs, and any part of this appropriation may be
19 transferred to any department for such purposes.

20 The purpose of this bill is to supplement the aforesaid
21 budget bill with a new account, item and language of ap-

- 22 appropriation, the amount of the same being available for
23 expenditure upon the effective date of the bill and in the
24 current fiscal year of 1975-76.

CHAPTER 2

(Com. Sub. for H. B. 139—By Mr. Seibert)

[Passed August 4, 1975; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all General Revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the State Department of Highways, Account No. 641, an act, supplementing Enrolled Committee Substitute for Senate Bill No. 23, enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenues, available cash balance, and estimated expirations, as provided by the Governor in the Executive Budget Document heretofore enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of funds available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Legislature, after enactment of the budget bill for the fiscal year 1975-76, enacted certain supplementary appropriation bills to various accounts of state spending units, which appropriations were well within the estimates of revenue, as reduced by the appropriations in the budget bill; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of \$47,606,475, as substantiated by his estimates submitted in the General Revenue Financial Statement of the Governor on July 29, 1975, amending and supplementing the budget document, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following new Account 641, the designated line items, and language of appropriation.

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 PROTECTION

4 129-B—*State Department of Highways*

5 Acct. No. 641

6 1 Maintenance—Expressway, Trunkline and
7 Feeder \$5,715,138

8 2 Elmore Bridge—Wyoming County \$4,000,000

9 Any or all of the above appropriation may be transferred to
10 the State Road Fund for disbursement.

11 The purpose of this bill is to supplement the aforesaid budget
12 bill with a new account, item and language of appropriation,
13 the amount of the same being available for expenditure upon
14 the effective date of the bill and in the current fiscal year of
15 1975-76.

CHAPTER 3

(H. B. 175—Originating in the House Committee on Finance)

[Passed August 5, 1975; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all General Revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the State Department of Highways, Account No. 641, an act, supplementing Enrolled Committee Substitute for Senate Bill No. 23,

enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenues, available cash balance, and estimated expirations, as provided by the Governor in the Executive Budget Document heretofore enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of funds available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Legislature, after enactment of the budget bill for the fiscal year 1975-76, enacted certain supplementary appropriation bills to various accounts of state spending units, which appropriations were well within the estimates of revenue, as reduced by the appropriations in the budget bill; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of \$47,606,475, as substantiated by his estimates submitted in the General Revenue Financial Statement of the Governor on July 29, 1975, amending and supplementing the budget document, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following new Account 641, the designated line item and language of appropriation.

1

TITLE II—APPROPRIATIONS.

2

Section 1. Appropriations from General Revenue.

3

PROTECTION

4

129-B—State Department of Highways

5

Acct. No. 641

6

3 Maintenance—State Local Service \$8,780,465

7 Any or all of the above appropriation may be transferred to
8 the State Road Fund for disbursement.

9 The purpose of this bill is to supplement the aforesaid budget
10 bill with a new account, item and language of appropriation,
11 the amount of the same being available for expenditure upon
12 the effective date of the bill and in the current fiscal year of
13 1975-76.

CHAPTER 4

(S. B. 37—By Mr. Rogerson)

[Passed November 5, 1975; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to West Virginia Railroad Maintenance Authority, Account No. 569, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of \$47,606,475, as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following new account, designated Account No. 569:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from General Revenue.
- 3 CONSERVATION AND DEVELOPMENT
- 4 111-A—*West Virginia Railroad Maintenance Authority*
- 5 Acct. No. 569
- 6 1 Unclassified _____ \$ 50,000
- 7 The purpose of this bill is to add the aforesaid account
- 8 and item therein for expenditure in the fiscal year
- 9 1975-76.

CHAPTER 5

(Com. Sub. for S. B. 65—By Mr. Oates, Mr. Hamilton, Miss Herndon and Mr. Williams)

[Passed November 5, 1975; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to West Virginia Board of Regents (Control), Account No. 279, an act, Enrolled Committee Substitute for Senate Bill No. 23, enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of \$47,606,475, as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 279, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EDUCATIONAL

4 32—West Virginia Board of Regents (Control)

5 Acct. No. 279

6 23a West Virginia School of Osteopathic
7 Medicine—Land Purchase\$ 558,000

8 The purpose of this bill is to acquire all the real prop-
9 erty and all facilities and equipment of the existing
10 Greenbrier College of Osteopathic Medicine, located at
11 Lewisburg, Greenbrier county, West Virginia. The above
12 appropriation is for expenditure during the fiscal year
13 1975-76.

CHAPTER 6

(H. B. 190—Originating in the House Committee on Finance)

[Passed November 4, 1975; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue

remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the State Department of Education—Professional Educators—Account No. 290, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1975, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1974, and funds transferred from the Department of Welfare after the close of fiscal year 1974; and further included the estimate of revenues for fiscal year 1974-75, less net appropriation balances forwarded and regular appropriations for fiscal year 1974-75, which said regular appropriations are offset by estimated expirations for fiscal year 1974-75; and

WHEREAS, The Governor's Executive Budget Document further included estimates of revenues for fiscal year 1975-76 of \$558,750,000 available for appropriation; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted certain supplementary appropriation bills for fiscal year 1974-75, a Budget Bill for fiscal year 1975-76, Enrolled Committee Substitute for Senate Bill No. 23, and certain supplementary appropriation bills for 1975-76, all well within the Governor's overall estimates of available revenues thereby leaving general revenues available for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 290, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EDUCATIONAL

4 *State Department of Education—*
5 *Professional Educators*

6 Acct. No. 290

7 1 Professional Educators \$ 16,201,672

8 Such amount is appropriated to increase each professional
9 educator's basic salary by \$700 over and above that specified
10 in chapter eighteen, article four, sections two and two-a of
11 the code. The number of professional educators so affected
12 shall be that number employed by the various county boards
13 of education as of the end of the third school month of the
14 1975-76 school year, exclusive of such educators employed
15 with federal funds. Included in the sum are sufficient dollars
16 to cover the fixed charges of matching social security pay-
17 ments and workmen's compensation costs.

CHAPTER 7

(S. B. 32—By Mr. Rogerson)

[Passed November 5, 1975; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to State Board of Education—Rehabilitation Division, Account No. 440, an act, Enrolled Committee Substitute for Senate Bill No. 23, enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state

spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of \$47,606,475, as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 440, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from General Revenue.
- 3 HEALTH AND WELFARE
- 4 85—State Board of Education—Rehabilitation Division
- 5 Acct. No. 440
- 6 9A Rehabilitation Center Construction \$600,000
- 7 The purpose of this bill is to supplement the aforesaid
- 8 account and item therein for expenditure in the fiscal
- 9 year 1975-76.

CHAPTER 8

(S. B. 36—By Mr. Rogerson)

[Passed November 5, 1975; in effect ninety days from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general

revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Public Land Corporation, Account No. 566, an act, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor has stated that he will be able to acquire federal moneys to match any appropriation of state moneys for the purpose of providing for a National Track and Field Hall of Fame; and

WHEREAS, The Legislature intends that any expenditure of this appropriation be contingent upon receipt by the Governor of the aforesaid federal funds; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1975-76; and

WHEREAS, In the regular session, one thousand nine hundred seventy-five, the Legislature enacted a supplementary appropriation bill, designated House Bill No. 1426, with the language of such bill, when considered in light of its effective date, subjecting the bill to being construed as void or voidable; and

WHEREAS, It is the intent of the Legislature that passage of this supplementary appropriation bill shall constitute a total voiding, repealing and nullification of said House Bill No. 1426 and to stand fully in lieu thereof in order to obviate any possible double-funding of this item and account; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of \$47,606,475 as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 566, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following purpose and sum to the designated line item:

1 **TITLE II—APPROPRIATIONS.**

2 **Section 1. Appropriations from General Revenue.**

3 **CONSERVATION AND DEVELOPMENT**

4 **110—Public Land Corporation**

5 **Acct. No. 566**

6 National Track and Field Hall of Fame_____ \$852,500

7 The purpose of this bill is to provide state general
8 revenue moneys to match federal funds in providing for
9 a National Track and Field Hall of Fame, the land and
10 buildings of such to be in the name of the state of West
11 Virginia and a public agency thereof. Such moneys may
12 be transferred to a special fund to match and aid federal
13 funds.

CHAPTER 9

(S. B. 58—By Mr. Kusic, Mr. Sharpe, Mr. Steptoe, Mr. Rogers, Mr. Saville,
Mr. Davis, Mr. Neeley, Miss Herndon and Mr. Nelson)

[Passed November 3, 1975; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-six, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse and dog racing; relating generally to the authorization and regulation of dog racing; relating to the West Virginia racing commission, its organization, opera-

tion and increased duties; providing for the regulation and control of horse and dog racing; requiring a license to hold or conduct a horse or dog race meeting; requiring a permit to engage in certain types of employment in connection with a horse or dog race meeting and establishing certain citizenship and residency requirements; providing definitions, adding definition of dog racing; establishing qualifications for members of the West Virginia racing commission; specifying and increasing the powers and authorities of the West Virginia racing commission; providing for the applications for and the issuance of licenses and permits; authorizing the West Virginia racing commission to promulgate reasonable rules and regulations; providing that the West Virginia racing commission may by reasonable rules and regulations authorize stewards, and other racing officials to impose reasonable fines or other sanctions and stewards to rule individuals off the grounds of any horse or dog racetrack; relating to the compensation and increasing the same of the commissioners; relating to the expenses of the members of the racing commission; relating to the compensation and expenses of other employees of the West Virginia racing commission; relating to the purses in connection with horse or dog race meetings; authorizing the West Virginia racing commission to refuse, suspend or revoke a license or permit and establishing the grounds therefor; authorizing stewards to suspend or revoke a permit; relating to the determination of racing dates; authorizing the pari-mutuel system of wagering upon horse or dog races held or conducted under the regulation and control of the West Virginia racing commission and excepting such wagering from the gaming statutes; prohibiting minors from wagering at any horse or dog racetrack; establishing the maximum commission which may be deducted from pari-mutuel pools by licensees of the West Virginia racing commission; providing for a specified deduction from the commission to establish regular purses for thoroughbred racing; providing for certain payments out of the maximum commission to be paid to counties in which thoroughbred or harness racetracks are located; establishing different maximum commissions

which may be deducted from pari-mutuel pools resulting from thoroughbred racing, harness racing and dog racing; imposing a daily license tax for thoroughbred racing, harness racing and dog racing; imposing different pari-mutuel pool taxes on thoroughbred racing, harness racing and dog racing conducted under the regulation and control of the West Virginia racing commission; relating to the remitting of all daily license taxes and the pari-mutuel pool taxes to the West Virginia racing commission; relating to the payment of such taxes to a special account to fund teachers salaries; providing that such license tax is in lieu of all other taxes except a license tax which may be imposed by a municipality on a horse racetrack located within such municipality; relating to the financial responsibility of the licensees of the West Virginia racing commission; relating to the retention and ultimate disposition of funds for the payment of outstanding and unredeemed pari-mutuel tickets; establishing procedures for making such tickets unredeemable and providing for certain payments from the resulting funds; authorizing the West Virginia racing commission to hold hearings on the issuance, suspension or revocation of licenses and permits; providing expressly that the provisions of chapter twenty-nine-a of the code shall govern the promulgation of all reasonable rules and regulations and the holding of hearings; authorizing the West Virginia racing commission to issue subpoenas and subpoenas duces tecum; relating to hearing costs; providing an automatic stay or suspension of execution of certain orders; providing for judicial review of the decisions of the West Virginia racing commission made following hearings; relating to the stay or suspension of execution of decisions pending judicial determination; relating to the construction and establishment of horse or dog racetracks for horse or dog race meetings; requiring construction permit therefor; relating to administrative procedures and hearings in connection therewith; providing for local option elections and procedures in connection with and incidental to the construction and establishment of horse or dog racetracks; relating to criminal offenses and providing criminal penalties

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-six, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

**PART I. LICENSE REQUIRED FOR HORSE AND DOG RACING
AND PARI-MUTUEL WAGERING IN CONNECTION THEREWITH;
PERMITS REQUIRED FOR CERTAIN HORSE AND
DOG RACETRACK POSITIONS.**

- §19-23-1. License required for horse and dog racing and pari-mutuel wagering in connection therewith; exception.
§19-23-2. Permits required for horse and dog racetrack positions; residency requirements for employees of licensees.

**PART II. DEFINITIONS; WEST VIRGINIA RACING
COMMISSION—ORGANIZATION AND OPERATION.**

- §19-23-3. Definitions.
§19-23-4. West Virginia racing commission continued as a public corporation; composition; terms; vacancies; qualifications; compensation and expenses of members; principal office; meetings; election of officers; quorum; inspection of records; annual report.

**PART III. RACING SECRETARY AND OTHER PERSONNEL
AND EMPLOYEES OF RACING COMMISSION.**

- §19-23-5. Racing secretary and other personnel; qualifications; terms; powers and duties; compensation and expenses.

**PART IV. POWERS AND AUTHORITY OF
RACING COMMISSION.**

- §19-23-6. Powers and authority of racing commission.

PART V. LICENSE AND PERMIT PROCEDURES.

- §19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.
§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.

**PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;
COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.**

- §19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

**PART VII. TAXATION OF HORSE AND DOG RACING AND
PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.**

- §19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.
§19-23-11. Revenues from horse racing and dog racing to be paid into the general revenue fund; revenues from horse racing and dog racing to be paid into special account to fund teachers salaries.
§19-23-12. License tax to be in lieu of all other license, etc., taxes; exception.

**PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF
OUTSTANDING AND UNREDEEMED PARI-MUTUEL
TICKETS; IRREDEEMABLE TICKETS; AWARDS.**

- §19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; awards to resident owners, etc., of winning horses and dogs.

PART X. HEARING PROCEDURES; JUDICIAL REVIEW.

- §19-23-15. Investigation by racing commission; suspension or revocation of license or permit.
§19-23-16. Entry of order suspending or revoking license or permit; service of order; contents; hearing; decision to be in writing.

**PART XI. CONSTRUCTION AND ESTABLISHMENT OF
HORSE AND DOG RACETRACKS.**

- §19-23-18. Horse and dog racetrack construction permits; application therefor.
§19-23-19. Tentative approval of application for construction permit; denial of application; publication of notice.
§19-23-20. Petition for local option election.
§19-23-21. Local option election procedure; form of ballots or ballot labels.
§19-23-22. Issuance or nonissuance of construction permit; duration of construction permit; transfer and assignment of a construction permit.
§19-23-23. Further elections restricted.

PART XIII. OFFENSES AND PENALTIES.

- §19-23-26. Offenses and penalties.

**PART I. LICENSE REQUIRED FOR HORSE AND DOG RACING
AND PARI-MUTUEL WAGERING IN CONNECTION THEREWITH;
PERMITS REQUIRED FOR CERTAIN HORSE AND
DOG RACETRACK POSITIONS.**

§19-23-1. License required for horse and dog racing and pari-mutuel wagering in connection therewith; exception.

1 (a) No association shall hold or conduct any horse or
2 dog race meeting at which horse or dog racing is per-
3 mitted for any purse unless such association possesses a
4 license therefor from the West Virginia racing commis-
5 sion and complies with the provisions of this article and
6 all reasonable rules and regulations of such racing com-
7 mission.

8 (b) Notwithstanding the provisions of subsection (a) of
9 this section, the provisions of this article shall not be
10 construed to prevent in any way the use without a license
11 of any grounds, enclosure or racetrack owned and con-
12 trolled by any association for any local, county or state
13 fair, horse show or agriculture or livestock exposition,
14 even though horse or dog racing be there conducted, if
15 the pari-mutuel system of wagering upon the results of
16 such horse or dog racing is neither permitted nor con-
17 ducted with the knowledge or acquiescence of the associa-
18 tion conducting such horse or dog racing.

**§19-23-2. Permits required for horse and dog racetrack posi-
tions; residency requirements for employees of
licensees.**

1 (a) No person not required to be licensed under the
2 provisions of section one of this article shall participate
3 in or have anything to do with horse or dog racing for a
4 purse or a horse or dog race meeting at any licensee's
5 horse or dog racetrack, place or enclosure, where the pari-
6 mutuel system of wagering upon the results of such horse
7 or dog racing is permitted or conducted, as a horse owner,
8 dog owner, jockey, apprentice jockey, exercise boy, kennel
9 keeper, trainer, groom, plater, stable foreman, valet,
10 veterinarian, agent, clerk of the scales, starter, assistant

11 starter, timer, judge or pari-mutuel employee, or in any
12 other capacity specified in reasonable rules and regula-
13 tions of the racing commission unless such person pos-
14 sesses a permit therefor from the West Virginia racing
15 commission and complies with the provisions of this
16 article and all reasonable rules and regulations of such
17 racing commission:

18 (b) At least eighty percent of the individuals employed
19 by a licensee at any horse or dog race meeting must be
20 citizens and residents of this state and must have been
21 such citizens and residents for at least one year. For the
22 purpose of this subsection, citizens and residents of this
23 state shall be construed to mean individuals who maintain
24 a permanent place of residence in this state, and have
25 been bona fide residents and citizens of this state for a
26 period of one year immediately prior to the filing of their
27 applications for employment. The provisions of this
28 subsection shall not apply to individuals engaged in the
29 construction of a horse or dog racetrack or in the equip-
30 ping of same, nor to racing officials designated by the
31 racing commission or racing officials designated by the
32 executive officials of a licensee.

PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION—ORGANIZATION AND OPERATION.

§19-23-3. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) "Horse racing" means any type of horse racing,
4 including, but not limited to, thoroughbred racing and
5 harness racing;

6 (2) "Thoroughbred racing" means flat or running type
7 horse racing in which each horse participating therein is
8 a thoroughbred and is mounted by a jockey;

9 (3) "Harness racing" means horse racing in which the
10 horses participating therein are harnessed to a sulky, car-
11 riage or other vehicle, and shall not include any form of
12 horse racing in which the horses are mounted by jockeys;

13 (4) "Horse race meeting" means the whole consecutive
14 period of time, Sundays excluded, for which a license is
15 required by the provisions of section one of this article;

16 (5) "Dog racing" means any type of dog racing, in-
17 cluding, but not limited to, greyhound racing;

18 (6) "Purse" means any purse, stake or award for which
19 a horse or dog race is run;

20 (7) "Racing association" or "person" means any indi-
21 vidual, partnership, firm, association, corporation or other
22 entity or organization of whatever character or descrip-
23 tion;

24 (8) "Applicant" means any racing association making
25 application for a license under the provisions of this ar-
26 ticle, or any person making application for a permit under
27 the provisions of this article, or any person making appli-
28 cation for a construction permit under the provisions of
29 this article, as the case may be;

30 (9) "License" means the license required by the pro-
31 visions of section one of this article;

32 (10) "Permit" means the permit required by the pro-
33 visions of section two of this article;

34 (11) "Construction permit" means the construction per-
35 mit required by the provisions of section eighteen of this
36 article;

37 (12) "Licensee" means any racing association holding a
38 license required by the provisions of section one of this
39 article and issued under the provisions of this article;

40 (13) "Permit holder" means any person holding a per-
41 mit required by the provisions of section two of this ar-
42 ticle and issued under the provisions of this article;

43 (14) "Construction permit holder" means any person
44 holding a construction permit required by the provisions
45 of section eighteen of this article and issued under the
46 provisions of this article;

47 (15) "Hold or conduct" includes "assist, aid or abet in
48 holding or conducting";

49 (16) "Racing commission" means the West Virginia
50 racing commission;

51 (17) "Stewards" means the steward or stewards repre-
52 senting the racing commission, the steward or stewards
53 representing a licensee and any other steward or stewards,
54 whose duty it shall be to supervise any horse or dog race
55 meeting, all as may be provided by reasonable rules and
56 regulations of the racing commission, and such reasonable
57 rules and regulations shall specify the number of stewards
58 to be appointed, the method and manner of their appoint-
59 ment and their powers, authority and duties;

60 (18) "Pari-mutuel" means a mutuel or collective pool
61 that can be divided among those who have contributed
62 their wagers to one central agency, the odds to be reck-
63 oned in accordance to the collective amounts wagered
64 upon each contestant running in a horse or dog race upon
65 which the pool is made, but the total to be divided among
66 the first three contestants on the basis of the number of
67 wagers on these;

68 (19) "Pool" means a combination of interests in a joint
69 wagering enterprise, or a stake in such enterprise;

70 (20) "Legitimate breakage" is the percentage left over
71 in the division of a pool;

72 (21) "To the dime" means that wagers shall be figured
73 and paid to the dime; and

74 (22) "Code" means the code of West Virginia, one
75 thousand nine hundred thirty-one, as heretofore and here-
76 after amended.

**§19-23-4. West Virginia racing commission continued as a
public corporation; composition; terms; vacancies;
qualifications, compensation and expenses of
members; principal office; meetings; election of
officers; quorum; inspection of records; annual
report.**

1 (a) The "West Virginia racing commission," hereto-
2 fore created, shall continue in existence as a public cor-
3 poration, and, as such, may contract and be contracted

4 with, plead and be impleaded, sue and be sued and have
5 and use a common seal.

6 (b) The racing commission shall consist of three
7 members, not more than two of whom shall belong to
8 the same political party, to be appointed by the gov-
9 ernor by and with the advice and consent of the Senate.
10 The term of office for the members of such racing com-
11 mission shall be four years, and until their successors
12 have been appointed and have qualified, and members of
13 the racing commission may serve any number of suc-
14 cessive terms. The members of the racing commission
15 in office on the effective date of this article shall, unless
16 removed by the governor after the effective date of this
17 article, continue to serve until their terms expire and
18 until their successors have been appointed and have
19 qualified. Any vacancy in the office of a member of the
20 racing commission shall be filled by appointment by
21 the governor for the unexpired term of the member
22 whose office shall be vacant. No individual shall be
23 eligible for appointment to or to serve upon the racing
24 commission:

25 (1) Unless he is an actual and bona fide resident of
26 this state, shall have resided in this state for a period
27 of at least five years next preceding his appointment,
28 shall be a qualified voter of this state and be not less
29 than twenty-five years of age;

30 (2) Who directly or indirectly, or in any capacity,
31 owns or has any interest, in any manner whatever, in
32 any racetrack where horse or dog race meetings may
33 be held, including, but not limited to, an interest as
34 owner, lessor, lessee, stockholder or employee;

35 (3) While serving as a member of the Legislature or
36 as an elective officer of this state; or

37 (4) Who has been or shall be convicted of an offense
38 which, under the law of this state or any other state or
39 of the United States of America, constitutes a felony,
40 or is a violation of article four, chapter sixty-one of this
41 code.

42 (c) Each member of the racing commission shall
43 receive a salary of five thousand dollars per annum to
44 be paid in monthly installments and shall be reimbursed
45 for all reasonable and necessary expenses actually in-
46 curred in the performance of his duties as a member of
47 the racing commission.

48 (d) The racing commission shall have its principal
49 office at the seat of government, and shall meet annually
50 at its principal office in the month of January, and at
51 such other times and places as shall be designated by
52 its chairman. At such annual meeting the racing com-
53 mission shall elect from its membership a chairman and
54 such other officers as may be desired. Other meetings
55 of the racing commission may be called by the chair-
56 man on such notice to the other members as may be
57 prescribed by the racing commission.

58 (e) A majority of the members of the racing com-
59 mission shall constitute a quorum for the transaction
60 of its business or the exercise of any of its powers and
61 authority. No individual not a bona fide member of the
62 racing commission shall vote upon or participate in the
63 deliberations of the racing commission on any matter
64 which may come before it. All racing commission rec-
65 ords, except as otherwise provided by law, shall be open
66 to public inspection during regular office hours.

67 (f) As soon as possible after the close of each calen-
68 dar year, the racing commission shall submit to the
69 governor a report of the transactions of the racing com-
70 mission during the preceding calendar year.

PART III. RACING SECRETARY AND OTHER PERSONNEL AND EMPLOYEES OF RACING COMMISSION.

§19-23-5. Racing secretary and other personnel; qualifications; terms; powers and duties; compensation and expenses.

1 (a) The racing commission shall appoint a racing
2 secretary to represent the racing commission and such
3 racing secretary shall possess such powers and authority
4 and perform such duties as the racing commission may

5 direct or prescribe. The racing secretary shall preserve at
6 the racing commission's principal office all books, maps,
7 records, documents and other papers of the racing
8 commission. The racing secretary shall, in addition to all
9 other duties imposed upon him by the racing commission,
10 serve in a liaison capacity between licensees and the
11 racing commission. The racing commission may also em-
12 ploy, direct and define the duties of an assistant racing
13 secretary and such stenographers, clerks and other office
14 personnel as it may deem necessary to carry out the duties
15 imposed upon it under the provisions of this article.

16 (b) In addition to the employees referred to above, the
17 racing commission shall employ, direct and define the
18 duties of a chief clerk, director of security, director of
19 audit, chief chemist, stewards to represent the racing
20 commission, supervisors of the pari-mutuel wagering
21 conducted under the provisions of this article, veteri-
22 narians, inspectors, accountants, guards and all other em-
23 ployees deemed by the racing commission to be essential
24 in connection with any horse or dog race meeting. The
25 director of audit shall be a certified public accountant or
26 experienced public accountant.

27 (c) No individual shall knowingly be employed or be
28 continued in employment by the racing commission in any
29 capacity whatever:

30 (1) Who directly or indirectly, or in any capacity,
31 owns or has any interest, in any manner whatever, in any
32 racetrack where horse or dog race meetings may be held,
33 including, but not limited to, an interest as owner, lessor,
34 lessee, stockholder or employee;

35 (2) Who at the time is or has been within one year
36 prior thereto a member of the Legislature or an elective
37 officer of this state, unless he is experienced and qualified
38 as a racing official; or

39 (3) Who has been or shall be convicted of an offense
40 which, under the law of this state or any other state or of
41 the United States of America, constitutes a felony, or is a
42 violation of article four, chapter sixty-one of this code.

43 Any steward employed by the racing commission or by a
44 licensee shall be a person of integrity, and experienced and
45 qualified for such position by the generally accepted
46 practices and customs of horse or dog racing in the United
47 States.

48 (d) The racing secretary and all other employees of the
49 racing commission shall serve at the will and pleasure of
50 the racing commission. The racing secretary and the other
51 employees referred to in this section as employees of the
52 racing commission shall receive such compensation as may
53 be fixed by the racing commission within the limit of
54 available funds, and shall be reimbursed for all reasonable
55 and necessary expenses actually incurred in the perfor-
56 mance of their official duties.

57 (e) All compensation and reimbursement for expenses
58 of the members of the racing commission, the racing
59 secretary and all other employees of the racing commis-
60 sion shall be paid from the funds in the hands of the state
61 treasurer collected under the provisions of this article and
62 shall be itemized in the budget in the same manner as all
63 other departments of state government, but no reim-
64 bursement for expenses incurred shall be paid unless an
65 itemized account thereof, under oath, be first filed with
66 the state auditor.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.

§19-23-6. Powers and authority of racing commission.

1 (a) The racing commission shall have full jurisdiction
2 over and shall supervise all horse race meetings, all
3 dog race meetings and all persons involved in the holding
4 or conducting of horse or dog race meetings, and, in
5 this regard, it shall have plenary power and authority:

6 (1) To investigate applicants and determine the eligi-
7 bility of such applicants for a license or permit or con-
8 struction permit under the provisions of this article;

9 (2) To fix, from time to time, the annual fee to be
10 paid to the racing commission for any permit required
11 under the provisions of section two of this article;

12 (3) To promulgate reasonable rules and regulations
13 implementing and making effective the provisions of
14 this article and the powers and authority conferred and
15 the duties imposed upon the racing commission under
16 the provisions of this article, including, but not limited
17 to, reasonable rules and regulations under which all
18 horse races, dog races, horse race meetings and dog race
19 meetings shall be held and conducted, all of which rea-
20 sonable rules and regulations shall be promulgated in
21 accordance with the provisions of article three, chapter
22 twenty-nine-a of this code;

23 (4) To register colors and assumed names and to fix,
24 from time to time, the annual fee to be paid to the racing
25 commission for any such registration;

26 (5) To fix and regulate the minimum purse to be
27 offered during any horse or dog race meeting;

28 (6) To fix a minimum and a maximum number of
29 horse races or dog races to be held on any respective
30 racing day;

31 (7) To enter the office, horse racetrack, dog race-
32 track, kennel, facilities and other places of business of
33 any licensee to determine whether the provisions of this
34 article and its reasonable rules and regulations are being
35 complied with, and for this purpose, the racing com-
36 mission, its racing secretary, representatives and em-
37 ployees may visit, investigate and have free access to
38 any such office, horse racetrack, dog racetrack, kennel,
39 facilities and other places of business;

40 (8) To investigate alleged violations of the provisions
41 of this article, its reasonable rules and regulations, orders
42 and final decisions and to take appropriate disciplinary
43 action against any licensee or permit holder or construc-
44 tion permit holder for the violation thereof or institute
45 appropriate legal action for the enforcement thereof or
46 take such disciplinary action and institute such legal
47 action;

48 (9) By reasonable rules and regulations, to authorize
49 stewards, starters and other racing officials to impose
50 reasonable fines or other sanctions upon any person

51 connected with or involved in any horse or dog racing
52 or any horse or dog race meeting; and to authorize
53 stewards to rule off the grounds of any horse or dog
54 racetrack any tout, bookmaker or other undesirable indi-
55 vidual deemed inimicable to the best interests of horse
56 and dog racing or the pari-mutuel system of wagering
57 in connection therewith;

58 (10) To require at any time the removal of any
59 racing official or racing employee of any licensee, for
60 the violation of any provision of this article, any reason-
61 able rule and regulation of the racing commission or
62 for any fraudulent practice;

63 (11) To acquire, establish, maintain and operate, or
64 to provide by contract for the maintenance and operation
65 of, a testing laboratory and related facilities, for the
66 purpose of conducting saliva, urine and other tests on
67 the horse or dog or horses or dogs run or to be run in
68 any horse or dog race meeting, and to purchase all equip-
69 ment and supplies deemed necessary or desirable in
70 connection with the acquisition, establishment, main-
71 tenance and operation of any such testing laboratory
72 and related facilities and all such tests;

73 (12) To hold up, in any disputed horse or dog race,
74 the payment of any purse, pending a final determination
75 of the results thereof;

76 (13) To require each licensee to file an annual balance
77 sheet and profit and loss statement pertaining to such
78 licensee's horse or dog racing activities in this state,
79 together with a list of each such licensee's stockholders
80 or other persons having any beneficial interest in the
81 horse or dog racing activities of such licensee;

82 (14) To issue subpoenas for the attendance of wit-
83 nesses and subpoenas duces tecum for the production
84 of any books, records and other pertinent documents,
85 and to administer oaths and affirmations to such wit-
86 nesses, whenever, in the judgment of the racing com-
87 mission, it is necessary to do so for the effective dis-
88 charge of its duties under the provisions of this article;

89 (15) To keep accurate and complete records of its
90 proceedings and to certify the same as may be appro-
91 priate; and

92 (16) To take such other action as may be reasonable
93 or appropriate to effectuate the provisions of this article
94 and its reasonable rules and regulations.

95 (b) The racing commission shall not interfere in the
96 internal business or internal affairs of any licensee.

PART V. LICENSE AND PERMIT PROCEDURES.

§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; applica- tion for permit.

1 (a) Any racing association desiring to hold or conduct
2 a horse or dog race meeting, where the pari-mutuel system
3 of wagering is permitted and conducted, during any cal-
4 endar year, shall file with the racing commission an appli-
5 cation for a license to hold or conduct such horse or dog
6 race meeting. A separate application shall be filed for
7 each separate license sought for each horse or dog race
8 meeting which such applicant proposes to hold or conduct.
9 The racing commission shall prescribe blank forms to be
10 used in making such application. Such application shall
11 be filed on or before a day to be fixed by the racing com-
12 mission and shall disclose, but not be limited to, the
13 following:

14 (1) If the applicant be an individual, the full name
15 and address of the applicant;

16 (2) If the applicant be a partnership, firm or associa-
17 tion, the full name and address of each partner or member
18 thereof, the name of the partnership, firm or association
19 and its post-office address;

20 (3) If the applicant be a corporation, its name, the
21 state of its incorporation, its post-office address, the full
22 name and address of each officer and director thereof,
23 and if a foreign corporation, whether it is qualified to do
24 business in this state;

25 (4) The dates such applicant intends to hold or conduct

26 such horse or dog race meeting (which shall be successive
27 weekdays, excluding Sundays);

28 (5) The location of the horse or dog racetrack, place or
29 enclosure where such applicant proposes to hold or con-
30 duct such horse or dog race meeting;

31 (6) Whether the applicant, any partner, member, offi-
32 cer or director has previously applied for a license under
33 the provisions of this article or for a similar license in this
34 or any other state, and if so, whether such license was
35 issued or refused, and, if issued, whether it was ever sus-
36 pended or revoked; and

37 (7) Such other information as the racing commission
38 may reasonably require which may include information
39 relating to any criminal record of the applicant, if an in-
40 dividual, or of each partner or member, if a partnership,
41 firm or association, or of each officer and director, if a
42 corporation.

43 (b) Such application shall be verified by the oath or
44 affirmation of the applicant for such license, if an indi-
45 vidual, or if the applicant is a partnership, firm, associ-
46 ation or corporation, by a partner, member or officer
47 thereof, as the case may be. When required by the racing
48 commission, an applicant for a license shall also furnish
49 evidence satisfactory to the racing commission of such
50 applicant's ability to pay all taxes due the state, purses,
51 salaries of officials and other expenses incident to the
52 horse or dog race meeting for which a license is sought. In
53 the event the applicant is not able to furnish such satis-
54 factory evidence of such applicant's ability to pay such
55 expenses and fees, the racing commission may require
56 bond or other adequate security before the requested li-
57 cense is issued.

58 (c) Any person desiring to obtain a permit, as required
59 by the provisions of section two of this article, shall make
60 application therefor on a form prescribed by the racing
61 commission. The application for any such permit shall be
62 accompanied by the fee prescribed therefor by the racing
63 commission. Each applicant for a permit shall set forth in

64 the application such information as the racing commission
65 shall reasonably require.

**§19-23-8. Consideration of application for license or permit;
issuance or denial; contents of license or permit;
grounds for denial of application; determination
of racing dates; license or permit not transferable
or assignable; limitation on license; validity of
permit.**

1 (a) The racing commission shall promptly consider
2 any application for a license or permit, as the case may
3 be. Based upon such application and all other informa-
4 tion before it, the racing commission shall make and
5 enter an order either approving or denying such appli-
6 cation. The application shall be denied for any reason
7 specified in subsection (b) of this section. If an applica-
8 tion for a license is approved, the racing commission
9 shall issue a license to conduct a horse or dog race meet-
10 ing, and shall designate on the face of such license the
11 kind or type of horse or dog racing for which the same
12 is issued, the racing association to which the same is
13 issued, the dates upon which such horse or dog race
14 meeting is to be held or conducted (which shall be suc-
15 cessive weekdays, or weeknights, excluding Sundays),
16 the location of the horse or dog racetrack, place or en-
17 closure where such horse or dog race meeting is to be
18 held or conducted and such other information as the
19 racing commission shall deem proper. If an application
20 for a permit is approved, the racing commission shall
21 issue a permit and shall designate on the face of such
22 permit such information as the racing commission shall
23 deem proper.

24 (b) The racing commission shall deny the application
25 and refuse to issue the license or permit, as the case
26 may be, which denial and refusal shall be final and con-
27 clusive unless a hearing is demanded in accordance with
28 the provisions of section sixteen of this article, if the
29 racing commission finds that the applicant (individually,
30 if an individual, or the partners or members, if a partner-
31 ship, firm or association, or the owners and directors, if
32 a corporation):

33 (1) Has knowingly made false statement of a material
34 fact in the application or has knowingly failed to dis-
35 close any information called for in the application;

36 (2) Is or has been guilty of any corrupt or fraudulent
37 act, practice or conduct in connection with any horse
38 or dog race meeting in this or any other state;

39 (3) Has been convicted, within ten years prior to
40 the date of such application, of an offense which under
41 the law of this state, of any other state or of the United
42 States of America, shall constitute a felony or a crime
43 involving moral turpitude;

44 (4) Has failed to comply with the provisions of this
45 article or any reasonable rules and regulations of the
46 racing commission;

47 (5) Has had a license to hold or conduct a horse or
48 dog race meeting or a permit to participate therein
49 denied for just cause, suspended or revoked in any other
50 state;

51 (6) Has defaulted in the payment of any obligation
52 or debt due to this state under the provisions of this
53 article;

54 (7) Is, if a corporation, neither incorporated under
55 the laws of this state nor qualified to do business within
56 this state;

57 (8) In the case of an application for a license, has
58 failed to furnish bond or other adequate security, if
59 the same is required by the racing commission under
60 the provisions of section seven of this article;

61 (9) In the case of an application for a permit, is
62 unqualified to perform the duties required for the per-
63 mit sought; or

64 (10) In the case of an application for a permit, is,
65 for just cause, determined to be undesirable to perform
66 the duties required of such applicant.

67 (c) In issuing licenses and fixing dates for horse or
68 dog race meetings at the various horse racetracks and
69 dog racetracks in this state, the racing commission shall
70 consider the horse racing circuits and dog racing circuits

71 with which the horse racetracks and dog racetracks in
72 this state are associated or contiguous to, and shall also
73 consider dates which are calculated to increase the
74 tax revenues accruing from horse racing and dog
75 racing.

76 (d) A license issued under the provisions of this
77 article is neither transferable nor assignable to any other
78 racing association and shall not permit the holding or
79 conducting of a horse or dog race meeting at any horse
80 or dog racetrack, place or enclosure not specified thereon.
81 However, if the specified horse or dog racetrack, place
82 or enclosure becomes unsuitable for the horse or dog
83 race meeting because of flood, fire or other catastrophe,
84 or cannot be used for any reason, the racing commission
85 may, upon application, authorize the horse or dog race
86 meeting, or any remaining portion thereof, to be
87 conducted at any other racetrack, place or enclosure
88 available for that purpose, provided that the owner of
89 such racetrack, place or enclosure willingly consents to
90 the use thereof.

91 (e) No type of horse racing or dog racing shall be
92 conducted by a licensee at any race meeting other than
93 that type for which a license was issued.

94 (f) Each permit issued under the provisions of this
95 section shall be for the period ending December thirty-
96 first of the year for which it was issued, and shall be
97 valid at all horse or dog race meetings during the period
98 for which it was issued, unless it be sooner suspended
99 or revoked in accordance with the provisions of this
100 article. A permit issued under the provisions of this
101 article is neither transferable nor assignable to any other
102 person.

**PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;
COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.**

**§19-23-9. Pari-mutuel system of wagering authorized; licensee
authorized to deduct commissions from pari-
mutuel pools; retention of breakage; auditing;
minors.**

1 (a) The pari-mutuel system of wagering upon the

2 results of any horse or dog race at any horse or dog race
3 meeting conducted or held by any licensee is hereby
4 authorized, if and only if such pari-mutuel wagering is
5 conducted by such licensee within the confines of such
6 licensee's horse racetrack or dog racetrack, and the pro-
7 visions of section one, article ten, chapter sixty-one of this
8 code, relating to gaming, shall not apply to the pari-
9 mutuel system of wagering in manner and form as pro-
10 vided for in this article at any horse or dog race meeting
11 within this state where horse or dog racing shall be per-
12 mitted for any purse by any licensee. A licensee shall
13 permit or conduct only the pari-mutuel system of wager-
14 ing within the confines of such licensee's racetrack at
15 which any horse or dog race meeting is conducted or
16 held.

17 (b) A licensee is hereby expressly authorized to deduct
18 a commission from the pari-mutuel pools, as follows:

19 (1) The commission deducted by any licensee from the
20 pari-mutuel pools on thoroughbred horse racing shall not
21 exceed seventeen and one-fourth percent of the total of
22 such pari-mutuel pools for the day. Out of such commis-
23 sion, the licensee shall pay the pari-mutuel pools tax
24 provided for in subsection (b), section ten of this article,
25 and shall deposit five and seventy-five one hundredths
26 percent of such pari-mutuel pools into a special fund to be
27 established by the licensee and to be used for the pay-
28 ment of regular purses offered for thoroughbred racing by
29 the licensee, and shall pay one tenth of one percent of
30 such pari-mutuel pools into the general fund of the
31 county commission of the county in which the racetrack
32 is located, except if within a municipality, then to such
33 municipal general fund. The remainder of the commission
34 shall be retained by the licensee.

35 (2) The commission deducted by any licensee from the
36 pari-mutuel pools on harness racing shall not exceed
37 seventeen and one-half percent of the total of such
38 pari-mutuel pools for the day. Out of such commission,
39 the licensee shall pay the pari-mutuel pools tax provided
40 for in subsection (c), section ten of this article, and shall

41 pay one tenth of one percent into the general fund of the
42 county commission of the county in which the racetrack is
43 located, except if within a municipality, then to such
44 municipal general fund. The remainder of the commission
45 shall be retained by the licensee.

46 (3) The commission deducted by any licensee from the
47 pari-mutuel pools on dog racing shall not exceed sixteen
48 percent of the total of such pari-mutuel pools for the day.
49 Out of such commission, the licensee shall pay the pari-
50 mutuel pools tax provided for in subsection (d), section
51 ten of this article. The remainder of the commission shall
52 be retained by the licensee.

53 (c) In addition to any such commission, a licensee of
54 horse race or dog race meetings shall also be entitled to
55 retain the legitimate breakage, which shall be made and
56 calculated to the dime.

57 (d) The director of audit, and any other auditors
58 employed by the racing commission who shall also be
59 certified public accountants or experienced public
60 accountants, shall have free access to the space or
61 enclosure where the pari-mutuel system of wagering is
62 conducted or calculated at any horse or dog race meeting
63 for the purpose of ascertaining whether or not the
64 licensee is deducting and retaining only a commission as
65 provided in this section and is otherwise complying with
66 the provisions of this section. They shall also, for the
67 same purposes only, have full and free access to all
68 records and papers pertaining to such pari-mutuel system
69 of wagering, and shall report to the racing commission in
70 writing, under oath, whether or not the licensee has
71 deducted and retained any commission in excess of that
72 permitted under the provisions of this section or has
73 otherwise failed to comply with the provisions of this
74 section.

75 (e) No licensee shall permit or allow any individual
76 under the age of eighteen years to wager at any horse or
77 dog racetrack, knowing or having reason to believe that
78 such individual is under the age of eighteen years.

PART VII. TAXATION OF HORSE AND DOG RACING AND
PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

1 (a) Any racing association conducting thoroughbred
2 racing at any horse racetrack in this state shall pay each
3 day upon which horse races are run a daily license tax of
4 two hundred fifty dollars. Any racing association con-
5 ducting harness racing at any horse racetrack in this
6 state shall pay each day upon which horse races are run a
7 daily license tax of one hundred fifty dollars. Any racing
8 association conducting dog races shall pay each day upon
9 which dog races are run a daily license tax of one hundred
10 fifty dollars. In the event thoroughbred racing, harness
11 racing, dog racing, or any combination of the foregoing
12 are conducted on the same day at the same racetrack by
13 the same racing association, only one daily license tax in
14 the amount of two hundred fifty dollars shall be paid for
15 that day. Any such daily license tax shall not apply to any
16 local, county or state fair, horse show or agricultural or
17 livestock exposition at which horse racing is conducted for
18 not more than six days.

19 (b) Any racing association licensed by the racing
20 commission to conduct thoroughbred racing and permit-
21 ting and conducting pari-mutuel wagering under the pro-
22 visions of this article shall, in addition to the aforemen-
23 tioned daily license tax, pay to the racing commission,
24 from the commission deducted each day by such licensee
25 from the pari-mutuel pools on thoroughbred racing, as a
26 tax, five and three-fourths percent of the total contri-
27 bution to all such pari-mutuel pools conducted or made
28 at any and every thoroughbred race meeting of the li-
29 censee licensed under the provisions of this article:
30 *Provided*, That any such racing association operating a
31 horse racetrack in this state having an average daily pari-
32 mutuel pool on horse racing of one hundred fifty thousand
33 dollars or less per day for the race meetings of the pre-
34 ceding calendar year shall, in lieu of payment of the five
35 and three-fourths percent pari-mutuel pool tax as afore-

36 said, be permitted to conduct pari-mutuel wagering at
37 such horse racetrack on the basis of a daily pari-mutuel
38 pool tax fixed as follows: On the daily pari-mutuel pool
39 not exceeding one hundred fifty thousand dollars the
40 daily pari-mutuel pool tax shall be four thousand dollars
41 plus five and three-fourths percent of the daily pari-
42 mutuel pool, if any, in excess of one hundred fifty thou-
43 sand dollars.

44 (c) Any racing association licensed by the racing
45 commission to conduct harness racing and permitting and
46 conducting pari-mutuel wagering under the provisions of
47 this article shall, in addition to the aforementioned daily
48 license tax, pay to the racing commission, from the
49 commission deducted each day by the licensee from the
50 pari-mutuel pools on harness racing, as a tax, three per-
51 cent of the first one hundred thousand dollars wagered, or
52 any part thereof; four percent of the next one hundred
53 fifty thousand dollars; and five and three-fourths percent
54 of all over that amount wagered each day in all such
55 pari-mutuel pools conducted or made at any and every
56 harness race meeting of the licensee licensed under the
57 provisions of this article.

58 (d) Any racing association licensed by the racing
59 commission to conduct dog racing and permitting and
60 conducting pari-mutuel wagering under the provisions of
61 this article shall, in addition to the aforementioned daily
62 license tax, pay to the racing commission, from the
63 commission deducted each day by such licensee from the
64 pari-mutuel pools on dog racing, as a tax, four percent of
65 the first fifty thousand dollars or any part thereof of such
66 pari-mutuel pools, five percent of the next fifty thousand
67 dollars of such pari-mutuel pools, six percent of the next
68 one hundred thousand dollars of such pari-mutuel pools,
69 seven percent of the next one hundred fifty thousand
70 dollars of such pari-mutuel pools, and eight percent of all
71 over three hundred fifty thousand dollars wagered each
72 day.

73 (e) All daily license and pari-mutuel pools tax
74 payments required under the provisions of this section

75 shall be made to the racing commission or its agent after
76 the last race of each day of each horse or dog race meet-
77 ing, and the pari-mutuel pools tax payments shall be made
78 from all contributions to all pari-mutuel pools to each and
79 every race of the day.

§19-23-11. Revenues from horse racing and dog racing to be paid into the general revenue fund; revenues from horse racing and dog racing to be paid into special account to fund teachers' salaries.

1 (a) All revenues collected pursuant to the provisions
2 of this article as license taxes or pari-mutuel pool taxes
3 on horse racing and dog racing shall be paid by the racing
4 commission to the state treasurer and be deposited by
5 him to the credit of the general revenue fund of the
6 state. Remittance of all such collected and accrued
7 revenues shall be made by the racing commission to the
8 state treasurer at least one time during each thirty-day
9 period of the racing season, and a final remittance as to
10 any particular horse race meeting shall be made within
11 thirty days from and after the close of each such horse
12 race meeting. The provisions of this subsection shall
13 expire June 30, 1976.

14 (b) Effective July 1, 1976, all revenues collected pur-
15 suant to the provisions of this article as license taxes
16 or pari-mutuel pools taxes on horse racing and dog racing
17 shall be paid by the racing commission to the state
18 treasurer, who shall deposit such revenues in a special
19 account to be denominated by him. The revenues in
20 such special account shall be accumulated and used for
21 the sole purpose of providing funding for salaries for
22 professional educators. Remittance of all such collected
23 revenues shall be made by the racing commission to the
24 state treasurer at least one time during each thirty-day
25 period of each racing season, and a final remittance as
26 to any particular dog race meeting shall be made
27 within thirty days from and after the close of each such
28 dog race meeting.

§19-23-12. License tax to be in lieu of all other license, etc., taxes; exception.

1 The license tax imposed in section ten of this article

2 shall be in lieu of all other license, income, excise, special
3 or franchise taxes of this state, and no county or mu-
4 nicipality or other political subdivision of this state shall
5 be empowered to levy or impose any license, income,
6 pari-mutuel, excise, special or franchise tax on any racing
7 association engaged in the business of conducting a horse
8 or dog race meeting at which horse or dog races are
9 run for purses under the jurisdiction of and being
10 licensed by the racing commission, or on the operation
11 or maintenance of the pari-mutuel system of wagering,
12 or on the sale of any commodity during a horse or dog
13 race meeting at which horse or dog races are run, or
14 at any such horse or dog racetrack: *Provided*, That the
15 foregoing provisions of this section shall in noway affect,
16 abridge or abolish the authority of a municipality to
17 impose the license tax authorized by the provisions of
18 section eight, article thirteen, chapter eight of this
19 code.

PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF
OUTSTANDING AND UNREDEEMED PARI-MUTUEL
TICKETS; IRREDEEMABLE TICKETS; AWARDS.

**§19-23-13. Disposition of funds for payment of outstanding
and unredeemed pari-mutuel tickets; publication
of notice; irredeemable tickets; awards to resi-
dent owners, etc., of winning horses and dogs.**

1 (a) All moneys held by any licensee for the payment
2 of outstanding and unredeemed pari-mutuel tickets, if
3 not claimed within ninety days after the close of the
4 horse or dog race meeting in connection with which the
5 tickets were issued, shall be turned over by the licensee
6 to the racing commission within fifteen days after the
7 expiration of such ninety-day period, and the licensee
8 shall give such information as the racing commission
9 may require concerning such outstanding and unre-
10 deemed tickets. All such moneys shall be deposited by
11 the racing commission in a banking institution of its
12 choice in a special account to be known as "West Vir-
13 ginia Racing Commission Special Account—Unredeemed
14 Pari-Mutuel Tickets." Notice of the amount, date and

15 place of such deposit shall be given by the racing com-
16 mission, in writing, to the state treasurer. The racing
17 commission shall then cause to be published a notice
18 to the holders of such outstanding and unredeemed pari-
19 mutuel tickets, notifying them to present such tickets
20 for payment at the principal office of the racing com-
21 mission within ninety days from the date of the pub-
22 lication of such notice. Such notice shall be published
23 within fifteen days following the receipt of said moneys
24 by the commission from the licensee as a Class I legal
25 advertisement in compliance with the provisions of ar-
26 ticle three, chapter fifty-nine of this code, and the pub-
27 lication area for such publication shall be the county
28 in which such horse or dog race meeting was
29 held.

30 (b) Any such pari-mutuel tickets that shall not be
31 presented for payment within ninety days from the date
32 of the publication of the notice shall thereafter be
33 irredeemable, and the moneys theretofore held for
34 the redemption of such pari-mutuel tickets shall become
35 the property of the racing commission, and shall be ex-
36 pended as follows:

37 (1) To the owner of the winning horse in any horse
38 race at a horse race meeting held or conducted by any
39 licensee, provided that the owner of such horse is at
40 the time of such horse race a bona fide resident of this
41 state, a sum equal to ten percent of the purse won by
42 such horse. The commission may require proof that the
43 owner was, at the time of the race, a bona fide resident
44 of this state. Upon proof by the owner that he filed a
45 personal income tax return in this state for the previous
46 two years and that he owned real or personal property
47 in this state and paid taxes in this state on said prop-
48 erty for the two previous years, he shall be presumed
49 to be a bona fide resident of this state; and

50 (2) To the breeder (that is, the owner of the mare)
51 of the winning horse in any horse race at a horse race
52 meeting held or conducted by any licensee, provided
53 that such breeder was at the time such winning horse

54 was foaled a bona fide resident of this state, a sum equal
55 to ten percent of the purse won by such horse;
56 and

57 (3) To the owner of the stallion which sired the
58 winning horse in any horse race at a horse race meeting
59 held or conducted by any licensee, provided that the
60 mare which foaled such winning horse was served by
61 such stallion in this state, and the owner of such stallion
62 was at the time of such service a bona fide resident of
63 this state, a sum equal to ten percent of the purse won by
64 such horse; and

65 (4) When the moneys in the special account, known
66 as the "West Virginia Racing Commission Special Ac-
67 count—Unredeemed Pari-Mutuel Tickets" will more than
68 satisfy the requirements of subdivisions (1) and (2), sub-
69 section (b) of this section, the West Virginia racing com-
70 mission shall have the authority to expend the excess
71 moneys from unredeemed horse racing pari-mutuel
72 tickets as purse money in any race conditioned exclu-
73 sively for West Virginia bred or sired horses, and to
74 expend the excess moneys from unredeemed dog racing
75 pari-mutuel tickets in supplementing purses and estab-
76 lishing dog racing handicaps at the dog tracks.

77 (c) Nothing contained in this article shall prohibit
78 one person from qualifying for all or more than one
79 of the aforesaid.

80 (d) The cost of publication of the notice provided
81 for in this section shall be paid from the funds in the
82 hands of the state treasurer collected from the pari-
83 mutuel pools tax provided for in section ten of this
84 article, when not otherwise provided in the budget; but
85 no such costs shall be paid unless an itemized account
86 thereof, under oath, be first filed with the state auditor.

PART X. HEARING PROCEDURES; JUDICIAL REVIEW.

§19-23-15. Investigation by racing commission; suspension or revocation of license or permit.

1 (a) The racing commission may conduct an investi-
2 gation to determine whether any provisions of this article

3 or any of its reasonable rules and regulations have been
4 or are about to be violated by a licensee or permit
5 holder. The racing commission may suspend or revoke
6 a license or permit if the licensee or permit holder, as
7 the case may be:

8 (1) Is convicted of an offense which, under the law
9 of this state, of any other state or of the United States
10 of America, shall constitute a felony or a crime involving
11 moral turpitude;

12 (2) Is, if a corporation, dissolved under the law of
13 this state or ceases to be qualified to do business within
14 this state; or

15 (3) Has a license or permit to which such licensee
16 or permit holder is not lawfully entitled.

17 (b) The racing commission may also suspend or
18 revoke a license or permit of a licensee or permit holder,
19 as the case may be, if it finds the existence of any ground
20 upon which the license or permit could have been re-
21 fused, or any ground which would be cause for refusing
22 a license or permit to such licensee or permit holder
23 were such licensee or permit holder then applying for
24 the same.

25 (c) A majority of the stewards at any horse or dog
26 race meeting may suspend or revoke a permit for any
27 reason for which the racing commission may suspend
28 or revoke a permit, as specified in subsections (a) and
29 (b) of this section, or for any other reason authorized
30 by reasonable rules and regulations promulgated by the
31 racing commission.

32 (d) Whenever a licensee fails to keep the bond re-
33 quired, if any, under the provisions of section seven of
34 this article in full force and effect, the license of such
35 licensee shall automatically be suspended unless and
36 until a bond or other security, if required, is furnished
37 to the racing commission, in which event the suspension
38 shall be vacated.

39 (e) Any suspension of a license or permit shall con-
40 tinue for the period specified in the order of suspension,
41 or until the cause therefor has been eliminated or cor-

42 rected, as set forth in the order of suspension. Revo-
43 cation of a license or permit shall not preclude appli-
44 cation for a new license or permit, which application
45 shall be processed in the same manner and the application
46 approved or denied and the license or permit issued or
47 refused on the same grounds as any other application
48 for a license or permit is processed, considered and passed
49 upon, except that any previous suspension and the revo-
50 cation may be given such weight in deciding whether
51 to approve or deny such application and issue or refuse
52 such license or permit as is meet and proper under all
53 of the circumstances.

§19-23-16. Entry of order suspending or revoking license or permit; service of order; contents; hearing; decision to be in writing.

1 (a) Whenever the racing commission shall deny an
2 application for a license or a permit or shall suspend or
3 revoke a license or a permit, it shall make and enter an
4 order to that effect and serve a copy thereof on the ap-
5 plicant, licensee or permit holder, as the case may be, in
6 any manner in which a summons may be served in a
7 civil action or by certified mail, return receipt requested.
8 Such order shall state the grounds for the action taken,
9 and, in the case of an order of suspension or revocation,
10 shall state the effective date of such suspension or revo-
11 cation.

12 (b) Whenever a majority of the stewards at any horse
13 or dog race meeting shall suspend or revoke a permit,
14 such suspension or revocation shall be effective immedi-
15 ately. The stewards shall, as soon as thereafter practicable,
16 make and enter an order to that effect and serve a copy
17 thereof on the permit holder, in any manner in which a
18 summons may be served in a civil action or by certified
19 mail, return receipt requested. Such order shall state the
20 grounds for the action taken.

21 (c) Any person adversely affected by any such order
22 shall be entitled to a hearing thereon if, within twenty
23 days after service of a copy thereof if served in any man-
24 ner in which a summons may be served as aforesaid or

25 within twenty days after receipt of a copy thereof if
26 served by certified mail as aforesaid, such person files with
27 the racing commission a written demand for such hearing.
28 A demand for hearing shall operate automatically to stay
29 or suspend the execution of any order suspending or re-
30 voking a license, but a demand for hearing shall not
31 operate to stay or suspend the execution of any order
32 suspending or revoking a permit. The racing commission
33 may require the person demanding such hearing to give
34 reasonable security for the costs thereof and if such per-
35 son does not substantially prevail at such hearing such
36 costs shall be assessed against such person and may be
37 collected by an action at law or other proper remedy.

38 (d) Upon receipt of a written demand for such hearing,
39 the racing commission shall set a time and place therefor
40 not less than ten and not more than thirty days thereafter.
41 Any scheduled hearing may be continued by the racing
42 commission upon its own motion or for good cause shown
43 by the person demanding the hearing.

44 (e) All of the pertinent provisions of article five, chap-
45 ter twenty-nine-a of this code shall apply to and govern
46 the hearing and the administrative procedures in con-
47 nection with and following such hearing, with like effect
48 as if the provisions of said article five were set forth in
49 this subsection.

50 (f) Any such hearing shall be conducted by a quorum
51 of the racing commission. For the purpose of conducting
52 any such hearing, any member of the racing commission
53 shall have the power and authority to issue subpoenas and
54 subpoenas duces tecum as provided for in section six of
55 this article. Any such subpoenas and subpoenas duces
56 tecum shall be issued and served within the time, for the
57 fees and shall be enforced, as specified in section one, ar-
58 ticle five of said chapter twenty-nine-a, and all of the said
59 section one provisions dealing with subpoenas and subpoe-
60 nas duces tecum shall apply to subpoenas and subpoenas
61 duces tecum issued for the purpose of a hearing hereunder.

62 (g) At any such hearing the person who demanded
63 the same may represent such person's own interests or

42 rected, as set forth in the order of suspension. Revo-
43 cation of a license or permit shall not preclude appli-
44 cation for a new license or permit, which application
45 shall be processed in the same manner and the application
46 approved or denied and the license or permit issued or
47 refused on the same grounds as any other application
48 for a license or permit is processed, considered and passed
49 upon, except that any previous suspension and the revo-
50 cation may be given such weight in deciding whether
51 to approve or deny such application and issue or refuse
52 such license or permit as is meet and proper under all
53 of the circumstances.

§19-23-16. Entry of order suspending or revoking license or permit; service of order; contents; hearing; decision to be in writing.

1 (a) Whenever the racing commission shall deny an
2 application for a license or a permit or shall suspend or
3 revoke a license or a permit, it shall make and enter an
4 order to that effect and serve a copy thereof on the ap-
5 plicant, licensee or permit holder, as the case may be, in
6 any manner in which a summons may be served in a
7 civil action or by certified mail, return receipt requested.
8 Such order shall state the grounds for the action taken,
9 and, in the case of an order of suspension or revocation,
10 shall state the effective date of such suspension or revo-
11 cation.

12 (b) Whenever a majority of the stewards at any horse
13 or dog race meeting shall suspend or revoke a permit,
14 such suspension or revocation shall be effective immedi-
15 ately. The stewards shall, as soon as thereafter practicable,
16 make and enter an order to that effect and serve a copy
17 thereof on the permit holder, in any manner in which a
18 summons may be served in a civil action or by certified
19 mail, return receipt requested. Such order shall state the
20 grounds for the action taken.

21 (c) Any person adversely affected by any such order
22 shall be entitled to a hearing thereon if, within twenty
23 days after service of a copy thereof if served in any man-
24 ner in which a summons may be served as aforesaid or

25 within twenty days after receipt of a copy thereof if
26 served by certified mail as aforesaid, such person files with
27 the racing commission a written demand for such hearing.
28 A demand for hearing shall operate automatically to stay
29 or suspend the execution of any order suspending or re-
30 voking a license, but a demand for hearing shall not
31 operate to stay or suspend the execution of any order
32 suspending or revoking a permit. The racing commission
33 may require the person demanding such hearing to give
34 reasonable security for the costs thereof and if such per-
35 son does not substantially prevail at such hearing such
36 costs shall be assessed against such person and may be
37 collected by an action at law or other proper remedy.

38 (d) Upon receipt of a written demand for such hearing,
39 the racing commission shall set a time and place therefor
40 not less than ten and not more than thirty days thereafter.
41 Any scheduled hearing may be continued by the racing
42 commission upon its own motion or for good cause shown
43 by the person demanding the hearing.

44 (e) All of the pertinent provisions of article five, chap-
45 ter twenty-nine-a of this code shall apply to and govern
46 the hearing and the administrative procedures in con-
47 nection with and following such hearing, with like effect
48 as if the provisions of said article five were set forth in
49 this subsection.

50 (f) Any such hearing shall be conducted by a quorum
51 of the racing commission. For the purpose of conducting
52 any such hearing, any member of the racing commission
53 shall have the power and authority to issue subpoenas and
54 subpoenas duces tecum as provided for in section six of
55 this article. Any such subpoenas and subpoenas duces
56 tecum shall be issued and served within the time, for the
57 fees and shall be enforced, as specified in section one, ar-
58 ticle five of said chapter twenty-nine-a, and all of the said
59 section one provisions dealing with subpoenas and subpoe-
60 nas duces tecum shall apply to subpoenas and subpoenas
61 duces tecum issued for the purpose of a hearing hereunder.

62 (g) At any such hearing the person who demanded
63 the same may represent such person's own interests or

64 be represented by an attorney at law admitted to practice
65 before any circuit court of this state. Upon request by
66 the racing commission, it shall be represented at any such
67 hearing by the attorney general or his assistants without
68 additional compensation. The racing commission, with the
69 written approval of the attorney general, may employ
70 special counsel to represent the racing commission at any
71 such hearing.

72 (h) After any such hearing and consideration of all of
73 the testimony, evidence and record in the case, the racing
74 commission shall render its decision in writing. The writ-
75 ten decision of the racing commission shall be accom-
76 panied by findings of fact and conclusions of law as speci-
77 fied in section three, article five, chapter twenty-nine-a
78 of this code, and a copy of such decision and accompany-
79 ing findings and conclusions shall be served by certified
80 mail, return receipt requested, upon the person demanding
81 such hearing, and his attorney of record, if any.

82 (i) The decision of the racing commission shall be
83 final unless reversed, vacated or modified upon judicial
84 review thereof in accordance with the provisions of sec-
85 tion seventeen of this article.

PART XI. CONSTRUCTION AND ESTABLISHMENT OF HORSE AND DOG RACETRACKS.

§19-23-18. Horse and dog racetrack construction permits; application therefor.

1 (a) No person shall construct and establish a horse
2 or dog racetrack where horse or dog race meetings are
3 to be held or conducted and the pari-mutuel system of
4 wagering permitted or conducted without a construction
5 permit issued by the racing commission in accordance
6 with the provisions of this article.

7 (b) Any person desiring to obtain a construction per-
8 mit shall file with the racing commission an application
9 therefor. The racing commission shall prescribe blank
10 forms to be used in making such application. Such appli-
11 cation shall disclose, but not be limited to, the following:

12 (1) If the applicant be an individual, the full name
13 and address of the applicant;

14 (2) If the applicant be a partnership, firm or associa-
15 tion, the full name and address of each partner or mem-
16 ber thereof, the name of the partnership, firm or associa-
17 tion and its post-office address;

18 (3) If the applicant be a corporation, its name, the
19 state of its incorporation, its post-office address, the full
20 name and address of each officer and director thereof,
21 and if a foreign corporation, whether it is qualified to do
22 business in this state;

23 (4) Whether the applicant, any partner, member,
24 officer or director has previously applied for a construc-
25 tion permit under the provisions of this article or for a
26 similar construction permit in this or any other state,
27 and if so, whether such construction permit was issued
28 or refused;

29 (5) The name and address of any person who has
30 agreed to lend the applicant money for use in connection
31 with such proposed horse or dog racetrack;

32 (6) The name and address of any other person who
33 is financially interested in the proposed horse or dog
34 racetrack;

35 (7) The county where the proposed horse or dog
36 racetrack is to be constructed and established, and if
37 such proposed horse or dog racetrack is to be constructed
38 and established across county lines, the identification of
39 each such county;

40 (8) Plans showing, in such detail as the racing com-
41 mission may require, the proposed horse or dog race-
42 track and all buildings and improvements to be used
43 in connection therewith; and

44 (9) Such other information as the racing commission
45 may reasonably require which may include information
46 relating to any criminal record of the applicant, if an
47 individual, or of each partner or member, if a partner-
48 ship, firm or association, or of each officer and director,
49 if a corporation.

50 (c) Such application shall be verified by the oath or
51 affirmation of the applicant for such construction permit,

52 if an individual, or if the applicant is a partnership, firm,
53 association or corporation, by a partner, member or
54 officer thereof, as the case may be.

55 (d) No application for a construction permit for the
56 construction and establishment of a dog racetrack shall be
57 received or acted upon by or a construction permit
58 issued by the racing commission for the construction
59 and establishment of a dog racetrack which is to be
60 located within fifty-five air miles of an existing horse
61 racetrack: *Provided*, That nothing herein contained shall
62 be construed to prohibit establishment of a dog racetrack
63 in conjunction with harness racetrack facilities existing
64 on and operating as a harness racetrack the first day of
65 February, one thousand nine hundred seventy-four, if
66 such facilities are or can be made suitable: *Provided*,
67 That nothing in this section exempts any such county
68 from the local option provisions of this article.

**§19-23-19. Tentative approval of application for construction
permit; denial of application; publication of
notice.**

1 (a) Upon the basis of the application and all other
2 information before it, the racing commission shall make
3 and enter an order granting tentative approval of the
4 application if it finds:

5 (1) That the applicant intends to proceed in good faith
6 to construct and establish a horse or dog racetrack com-
7 plying in all particulars with the law of this state, the
8 provisions of this article and any reasonable rules and
9 regulations of the racing commission;

10 (2) That the plans for such proposed horse or dog
11 racetrack are adequate and have been prepared with due
12 regard to the safety of all persons who will use such horse
13 or dog racetrack;

14 (3) That the applicant is financially able to complete
15 such horse or dog racetrack in accordance with the plans
16 submitted with such application; and

17 (4) That the construction and establishment of such

18 proposed horse or dog racetrack would be in the best
19 interests of horse or dog racing within this state.

20 (b) Otherwise, the racing commission shall deny the
21 application and refuse to grant tentative approval thereof.
22 The racing commission shall make and enter an order to
23 that effect and all of the provisions of section sixteen
24 pertaining to the denial of any application for a license
25 and an order in connection therewith and the provisions
26 of section seventeen pertaining to judicial review of a
27 decision of the racing commission shall govern and con-
28 trol. The denial and refusal shall be final and conclusive
29 unless a hearing thereon shall be demanded pursuant to
30 the provisions of section sixteen of this article considered
31 in pari materia with the preceding sentence of this sub-
32 section (b).

33 (c) If the racing commission grants tentative approval
34 of such application, it shall prepare and publish a notice
35 to the public that the racing commission has granted
36 tentative approval of the application and that the racing
37 commission will confirm such tentative approval and
38 issue a construction permit to the applicant at the ex-
39 piration of sixty days from the date of the first publica-
40 tion of such notice (which date shall be specified in said
41 notice), unless within said time a petition for a local option
42 election shall have been filed, in accordance with the
43 provisions of this article, with the county commission of
44 the county in which any integral part of said horse or dog
45 racetrack is proposed to be constructed and established.
46 Such notice shall be published as a Class II legal adver-
47 tisement in compliance with the provisions of article
48 three, chapter fifty-nine of this code, and the publication
49 area for such publication shall be the county in which
50 any integral part of such proposed horse or dog racetrack
51 is to be constructed and is established.

§19-23-20. Petition for local option election.

1 A petition for a local option election on the question
2 of the proposed construction and establishment of a
3 horse or dog racetrack must be signed by qualified voters
4 residing within the county equal to at least fifteen per-

5 cent of the qualified voters within said county at the
6 last general election. Said petition may be in any num-
7 ber of counterparts, but must be filed with the county
8 commission prior to the expiration of the sixty-day period
9 specified in the notice published by the racing com-
10 mission in accordance with the provisions of section nine-
11 teen of this article. Said petition shall be sufficient if
12 in substantially the following form:

13 "PETITION FOR LOCAL OPTION ELECTION CON-
14 CERNING THE PROPOSED CONSTRUCTION AND
15 ESTABLISHMENT OF A (HORSE OR DOG) RACE-
16 TRACK IN _____ COUNTY, WEST
17 VIRGINIA.

18 "Each of the undersigned certifies that he or she is
19 an individual residing in _____ County,
20 West Virginia, and is a qualified voter in said county
21 under the laws of this State, and that his or her name,
22 address and the date of signing this petition are cor-
23 rectly set forth below.

24 "The undersigned petition the county commission to
25 call and hold a local option election as required by article
26 twenty-three, chapter nineteen of the Code of West Vir-
27 ginia, one thousand nine hundred thirty-one, as amended,
28 upon the following question: 'Shall the West Virginia
29 Racing Commission issue a construction permit autho-
30 rizing the construction and establishment of a (horse
31 or dog) racetrack where (horse or dog) race meetings
32 may be held or conducted and the pari-mutuel system
33 of wagering permitted and conducted in _____
34 County, West Virginia?"

35	Name	Address	Date
----	------	---------	------

36

37

38

39 (Each individual signing must specify either his
40 post-office address or his street name and number.)"

§19-23-21. Local option election procedure; form of ballots or ballot labels.

1 (a) Upon the timely filing of a proper petition for a
2 local option election in accordance with the provisions
3 of section twenty of this article, the county commission
4 of the county in which all or any integral part of a pro-
5 posed horse or dog racetrack is to be constructed and
6 established is hereby authorized to call a local option
7 election for the purpose of determining the will of the
8 qualified voters within said county as to the construction
9 and establishment of all or any integral part of such
10 horse or dog racetrack within said county. Upon the
11 timely filing of a proper petition as aforesaid, the county
12 commission shall enter an order calling for a local option
13 election and providing that the same shall be held at
14 the same time and as a part of the next primary or
15 general election to be held in said county. A copy of
16 the order so entered by the county commission shall
17 be served upon the racing commission and the racing
18 commission shall take no further action in connection
19 with the issuance of such construction permit until said
20 local option election shall be held. Said county com-
21 mission shall give notice of such local option election
22 by publication of such notice as a Class II-0 legal adver-
23 tisement in compliance with the provisions of article
24 three, chapter fifty-nine of this code, and the publication
25 area for such publication shall be the county. Such
26 notice shall be so published within fourteen consecutive
27 days next preceding the date of said election.

28 (b) The local option election ballots, or ballot labels
29 where voting machines are used, shall have printed
30 thereon substantially the following:

31 "Shall the West Virginia Racing Commission issue a
32 construction permit authorizing the construction and
33 establishment of a (horse or dog) racetrack where (horse
34 or dog) race meetings may be held or conducted and
35 the pari-mutuel system of wagering permitted and con-
36 ducted?

37

☐ Yes☐ No

38

(Place a cross mark in the square
opposite your choice.)"

39

40 (c) Each individual qualified to vote in said county
41 at a primary or general election shall likewise be quali-
42 fied to vote at the local option election. The election
43 officers appointed and qualified to serve as such at said
44 primary or general election shall conduct said local
45 option election in connection with and as a part of said
46 primary or general election. The votes in said local
47 option election shall be counted and returns made by
48 the election officers, the results certified by the com-
49 missioners of election to said county commission which
50 shall canvass the ballots, all in accordance with the laws
51 of this state relating to primary and general elections
52 insofar as the same are applicable. The county com-
53 mission shall, without delay, canvass the votes cast at
54 such local option election and certify the results thereof
55 to the racing commission.

**§19-23-22. Issuance or nonissuance of construction permit;
duration of construction permit; transfer and
assignment of construction permit.**

1 (a) The racing commission shall, after the certification
2 of the results of such local option election, issue such
3 construction permit if a majority of the legal votes cast
4 at such election were in favor of the issuance of a con-
5 struction permit. If a majority of the legal votes cast at
6 such election were opposed to the issuance of a construc-
7 tion permit, the commission shall not issue a construction
8 permit.

9 (b) A construction permit issued as aforesaid shall re-
10 main valid only for a three-month period, except that if
11 the racing commission is satisfied that the construction
12 permit holder has in good faith started and is continuing
13 construction of the proposed horse or dog racetrack, the
14 racing commission may extend the construction permit
15 for additional successive three-month periods, but in no
16 event shall the aggregate time of such construction permit
17 exceed a period of twenty-four months from the date of
18 the issuance of the construction permit.

19 (c) No construction permit which may be or has been
20 issued under provisions of this article or the former pro-

21 visions of this article shall be transferred or assigned
22 in any manner whatever without the written consent of
23 the racing commission.

§19-23-23. Further elections restricted.

1 When a local option election in accordance with the
2 provisions of this article or the former provisions of this
3 article shall have been held in a county, another such
4 election shall not be held in said county for a period of
5 five years, and within that time the racing commission
6 shall not accept or act upon any application for any other
7 construction permit within said county, except that if an
8 election be held seeking the approval of a permit for the
9 construction of a horse racetrack another election may be
10 held within such five-year period seeking the approval of
11 a permit for the construction of a dog racetrack, and the
12 reverse shall also be true. In the event a horse or dog
13 racetrack shall be constructed in a county pursuant to a
14 construction permit issued by the racing commission in
15 accordance with the provisions of this article, no local
16 option election shall thereafter be held as to any horse or
17 dog racetrack constructed and established pursuant to
18 such construction permit: *Provided*, That a local option
19 election has been held for the type of racing to be con-
20 ducted.

PART XIII. OFFENSES AND PENALTIES.

§19-23-26. Offenses and penalties.

1 (a) Any person holding or conducting, or assisting,
2 aiding or abetting in the holding or conducting, of any
3 horse or dog race meeting at which horse or dog racing
4 and the pari-mutuel system of wagering on the same is
5 permitted or conducted, without a license issued by the
6 racing commission, which license remains unexpired,
7 unsuspended and unrevoked, shall be guilty of a
8 misdemeanor, and, upon conviction, shall be punished by
9 a fine of not less than one thousand dollars for each day of
10 such unauthorized horse or dog race meeting, or by im-
11 prisonment in jail not exceeding one year, or by both
12 such fine and imprisonment, in the discretion of the court:

13 *Provided*, That no conviction shall be had or punishment
14 imposed upon any licensee, whose license has been sus-
15 pended or revoked, for holding or conducting a horse or
16 dog race meeting while execution of the order of sus-
17 pension or revocation is stayed or suspended as provided
18 in this article.

19 (b) Any person violating any provision of section four
20 or section five of this article shall be guilty of a misde-
21 meanor, and, upon conviction, shall be punished by a
22 fine of not less than five hundred dollars nor more than
23 one thousand dollars, or by imprisonment in jail for not
24 less than six months nor more than one year, or by both
25 such fine and imprisonment, in the discretion of the court.
26 The venue of any such offense shall be in the county, or
27 any one of the counties, wherein the person violating said
28 section four or section five carries out any duties of, or
29 performs any work for, the racing commission, which
30 constitute the basis of the charge or complaint.

31 (c) Any person violating any provision of subsection
32 (b), section two of this article shall be guilty of a mis-
33 demeanor, and, upon conviction, shall be punished by a
34 fine of not less than one hundred dollars nor more than
35 five hundred dollars, or by imprisonment in jail for not
36 less than one month nor more than two months, or by
37 both such fine and imprisonment, in the discretion of the
38 court. The venue of any such offense shall be in the
39 county, or any one of the counties, wherein the person
40 violating said subsection (b) carries out any duties of, or
41 performs any work for, the racing commission, which
42 constitute the basis of the charge or complaint.

43 (d) False swearing before the racing commission on the
44 part of any witness shall be deemed perjury and shall be
45 punished as such.

CHAPTER 10

(Com. Sub. for S. B. 64—By Mr. Oates, Mr. Hamilton, Miss Herndon and Mr. Williams)

[Passed November 5, 1975; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-d, relating to education, West Virginia board of regents, providing for the establishment, maintenance and operation of a state college of osteopathic medicine; providing for the employment of a president, staff and faculty; providing for the appointment of an advisory board; authorizing programs, curricula, and other services; establishing fees; providing for special fees; authorizing expenditures; permitting purchase of real property; providing for capital improvements; providing for contract authority generally; providing specifically for contracts by the board and the West Virginia anatomical board; and providing for use of cadavers.

Be it enacted by the Legislature of West Virginia:

That article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirteen-d, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-13d. Establishment and operation of a state college of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.

- 1 On or before the thirty-first day of December, one
- 2 thousand nine hundred seventy-five, the board of regents
- 3 shall establish, and thereafter maintain and operate a
- 4 state college of osteopathy, to be known as the "West
- 5 Virginia School of Osteopathic Medicine" and to be
- 6 located in Lewisburg, Greenbrier county, West Virginia.

7 For this purpose, the board is authorized and is hereby
8 directed to acquire all the real property and all facilities
9 and equipment of the existing Greenbrier College of
10 Osteopathic Medicine, located at Lewisburg, Greenbrier
11 county, West Virginia. The cost of acquisition shall
12 not exceed five hundred fifty-eight thousand dollars
13 (\$558,000).

14 The board of regents, upon acquisition, shall forthwith
15 employ a president and such staff and faculty as de-
16 termined appropriate for the college, appoint an advisory
17 board consistent with section nine of this article and
18 exercise general determination, control, supervision and
19 management of the financial, business and educational
20 policies and affairs of the state college of osteopathic
21 medicine.

22 The college shall be authorized to offer such curricula,
23 programs, courses and services and confer such degrees
24 as may be approved by the board of regents. The board
25 of regents shall fix tuition and establish and set other
26 fees to be charged students as it deems appropriate,
27 including the establishment of special fees for specific
28 purposes. Special fees shall be paid into special funds and
29 be used only for the purposes for which said fees were
30 collected.

31 The board of regents shall expend from the appropria-
32 tions allocated for the West Virginia School of Osteopathic
33 Medicine such funds as are necessary for the operation
34 and conduct of programs, the acquisition of clear title to
35 the property of the Greenbrier College of Osteopathic
36 Medicine, and for necessary capital improvements. The
37 title to all property purchased for the use of the West
38 Virginia School of Osteopathic Medicine shall be vested
39 in the board of regents.

40 The board of regents is authorized to enter into con-
41 tracts on behalf of the West Virginia School of Osteopathic
42 Medicine with public and private educational institutions,
43 agencies and boards, with governmental agencies and
44 with corporations, partnerships, and individuals for the
45 performance of instructional or other services.

46 The board of regents is hereby specifically authorized
47 to contract with the West Virginia anatomical board and
48 the West Virginia anatomical board is hereby specifically
49 authorized to contract with the board of regents on be-
50 half of the West Virginia School of Osteopathic Medicine
51 for the requisition, use, disposition and control of any
52 body as may come under the authority of the anatomical
53 board, provided that such body be used exclusively for
54 educational purposes of West Virginia School of Osteo-
55 pathic Medicine.

56 The board of regents is further authorized to contract
57 with any other person, corporation or entity for the
58 purchase of cadavers for educational purposes at the
59 West Virginia School of Osteopathic Medicine, notwith-
60 standing any provision of law to the contrary.

CHAPTER 11

(Com. Sub. for H. B. 164—By Mr. Damron, 10th District, and Mr. Wright)

[Passed November 5, 1975; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b, relating to an additional salary increase of seven hundred dollars for teachers; providing for the payment of the total amount of seven hundred dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, and providing for the payment of such additional salary increase and the additional increased fixed charges required thereby outside the West Virginia public school support plan.

Be it enacted by the Legislature of West Virginia:

That article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-b, to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**§18A-4-2b. Additional salary increase for teachers.**

1 In addition to the amount of state minimum salary he
2 would receive pursuant to the provisions of sections two
3 and two-a of this article, each teacher shall receive as an
4 additional salary increase an amount of seven hundred dollars:
5 *Provided*, That for the fiscal year ending June thirtieth, one
6 thousand nine hundred seventy-six, the total amount of seven
7 hundred dollars shall be paid between the effective date of this
8 section and the end of such fiscal year. The additional salary
9 increase provided under this section, and the additional in-
10 creased fixed charges payments required thereby, shall be paid
11 for outside the West Virginia public school support plan pro-
12 vided for in article nine-a, chapter eighteen of this code.

RESOLUTIONS

CONCURRENT RESOLUTIONS

(Only resolutions of general interest are included herein)

Authorizing legislative interim studies:

(Since these resolutions take the same general form, they are listed herein by number showing the subject of the studies authorized. They may be found in the House and Senate Journals of the session).

House Concurrent

2. Study of retirement benefits for public officers and public employees convicted of crimes relating to their official office and duties.

SENATE CONCURRENT RESOLUTION NO. 4

(By Mr. Fanning and Mr. Susman)

[Adopted November 5, 1975.]

Creating a special Education Finance Study Commission.

WHEREAS, The West Virginia system for the funding of its public education system consists of a complicated network of state and local laws, regulations, taxes and expenditures; and

WHEREAS, The State Aid Formula comprises only one part of the total system for public education funding; and

WHEREAS, Rising education costs, as well as constitutional complications, demand that the entire system of the funding of public education in West Virginia be more fully understood, so that the system can be improved, streamlined and made more effective in meeting the educational needs of the citizens of this State; therefore, be it

Resolved by the Legislature of West Virginia:

That a special commission to be known as the Education Finance Study Commission is hereby created, consisting of three members

of the Senate, to be appointed by the President thereof, no more than two of whom shall be appointed from the same political party, one of whom the President shall designate as cochairman, and three members of the House of Delegates, to be appointed by the Speaker thereof, no more than two of whom shall be appointed from the same political party, one of whom the Speaker shall designate as cochairman, and three persons residing within the State, not members of the Legislature, who are knowledgeable in the field of education finance, who shall be appointed jointly by the President of the Senate and the Speaker of the House of Delegates; and, be it

Further Resolved, That it shall be the task of the commission to direct a comprehensive interim study of the West Virginia system for the funding of public education, to determine necessary improvements thereof and to make recommendations to the Legislature to implement such improvements as it may recommend; and, be it

Further Resolved, That the State Department of Education and the Boards of Education of the various counties of West Virginia shall, when requested, assist the commission in its endeavors; and, be it

Further Resolved, That the commission shall obtain the services of consultants and experts knowledgeable in the field of financing public education in various school systems within the United States; and, be it

Further Resolved, That the commission shall submit a report of its findings, conclusions and recommendations, together with drafts of any legislation it may recommend, to the regular session of the Legislature, 1977; and, be it

Further Resolved, That the expenses necessary to conduct the study, to employ consultants and experts and to prepare a report be paid from legislative appropriations to the Joint Committee on Government and Finance, but no expenses shall be incurred unless the approval of the Joint Committee on Government and Finance is first had and obtained by said commission.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1976

CHAPTER 1

(Com. Sub. for H. B. 107—By Mr. Seibert)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all General Revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the State Department of Highways, Account No. 641, an act, supplementing Enrolled Committee Substitute for House Bill No. 701, enacted by the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1976, enacted a Budget Bill for the fiscal year 1976-77 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues; and

WHEREAS, It thus appearing from the aforesaid, the Governor's Executive Budget Document, and the revision to such document submitted by the Governor on June 21, 1976, amending and supplementing such Budget Document, that a sufficient balance of general revenue is available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven; a portion of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following new Account No. 641, the designated line items, and language of appropriation:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 PROTECTION

4 128-A—*State Department of Highways*

5 Acct. No. 641

6	1	Expressway, Trunkline and Feeder	\$ 1,912,000
7	2	State Local Service	10,058,000
8	3	General Operations	1,024,000
9	4	Interstate Construction	8,475,000
10	5	Other Federal Aid Construction	6,144,000
11	6	Nonfederal Aid Construction	1,016,000

12 Total\$ 28,629,000

13 Any or all of the above appropriation may be transferred
14 to the State Road Fund.

15 The purpose of this bill is to supplement the aforesaid
16 budget bill with a new account, items and language of appro-
17 priation, the amount of the same being available for expendi-
18 ture in fiscal year 1976-77.

19 The above appropriation in conjunction with Account No.
20 670 includes amounts sufficient to implement Enrolled House

- 21 Bill No. 1590, acts of the Legislature, regular session, one
22 thousand nine hundred seventy-six.

CHAPTER 2

(Com. Sub. for H. B. 102—By Mr. Seibert)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all State Road Funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the State Department of Highways, Account No. 670, an act, supplementing Enrolled Committee Substitute for House Bill No. 701, enacted by the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a Statement of Revenues—By Funds, including the State Road Fund; and

WHEREAS, The Legislature, during the regular session, 1976, enacted a Budget Bill for the fiscal year 1976-77 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues; and

WHEREAS, It thus appearing from the aforesaid, the Governor's Executive Budget Document and his revision of such document, including the State Road Fund as submitted by him on June 21, 1976, that a sufficient balance of State Road Fund moneys are available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven; a portion of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding

thereto the following amounts to the designated existing line items in Account No. 670, and by adding to said account certain new designated line items and language of appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 2. Appropriations from Other Funds.

3 129—*State Department of Highways*

4 Acct. No. 670

5 TO BE PAID FROM STATE ROAD FUND

6	1	Expressway, Trunkline and Feeder	\$ 1,912,000
7	2	State Local Service	10,058,000
8	5	General Operations	1,024,000
9	8a	Interstate Construction	113,447,000
10	8b	Appalachian Program	68,059,000
11	8c	Other Federal Aid Construction	86,118,000
12	8d	Nonfederal Aid Construction	68,827,000

13 The purpose of this bill is to supplement existing items in
14 the aforesaid account and to further supplement the account
15 with new items and language of appropriation. The amounts
16 hereby appropriated shall be available for expenditure in fiscal
17 year 1976-77.

18 The above appropriations, in conjunction with Account No.
19 641 and appropriations previously made in the Budget Bill for
20 Account No. 670, include amounts sufficient to implement
21 Enrolled House Bill No. 1590, acts of the Legislature, regular
22 session, one thousand nine hundred seventy-six.

CHAPTER 3

(H. B. 144—By Mr. Seibert)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Insurance Commissioner, Account No. 616, as appropriated by chapter eleven,

acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Acct. No. 616, chapter eleven, regular session, one thousand nine hundred seventy-five, be supplemented, amended and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 PROTECTION

4 129—Insurance Commissioner

5 Acct. No. 616

6 1 Personal Services\$480,050

7 2 Current Expenses 136,900

8 The purpose of this supplementary appropriation bill is to
9 supplement, amend and transfer certain moneys from one item
10 of the existing appropriation to another item of such appro-
11 priation for the designated spending unit. The amounts as
12 itemized for expenditure during the fiscal year one thousand
13 nine hundred seventy-six shall be made available for expendi-
14 ture upon the effective date of this bill.

CHAPTER 4

(H. B. 136—By Mr. Seibert)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Department of Natural Resources, Account No. 565, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a

statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76;

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 565, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 CONSERVATION AND DEVELOPMENT

4 109—*Department of Natural Resources*

5 Acct. No. 565

6 9 Clarke-McNary Fire Prevention \$ 60,000

7 The purpose of this bill is to supplement the aforesaid
8 account and item therein for expenditure in the fiscal year
9 1975-76. Such amount shall be available for expenditure upon
10 the effective date of this bill.

CHAPTER 5

(H. B. 146—By Mr. Burke)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of

Natural Resources, Account No. 565, as appropriated by chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 565, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be supplemented, amended and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 CONSERVATION AND DEVELOPMENT

4 129—*Department of Natural Resources*

5 Acct. No. 565

6 11 Water Resources Board _____ \$ 22,802

7 16 Reclamation Board of Review _____ \$ 6,000

8 The purpose of this supplementary appropriation bill is to
9 supplement, amend and transfer certain moneys from one item
10 of the existing appropriation to another item of such appropri-
11 tion for the designated spending unit. The amounts as
12 itemized for expenditure during the fiscal year one thousand
13 nine hundred seventy-six shall be made available for expendi-
14 ture upon the effective date of this bill.

CHAPTER 6

(S. B. 35—By Mr. Rogerson)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all funds remaining unappropriated from the Revenue Sharing Trust Fund for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the Department of Natural Resources, Account No. 972, an act, Enrolled Committee Substitute for House Bill

No. 701, enacted by the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That Account No. 972, Enrolled Committee Substitute for House Bill No. 701, an act of the Legislature, one thousand nine hundred seventy-six, known as the Budget Bill, be amended by adding the designated line and be supplemented by adding to the designated line the following sum:

1 TITLE II—APPROPRIATIONS.

2 Section 7. Appropriations from Revenue Sharing Trust Fund.

3 179—Revenue Sharing Trust Fund—
4 Department of Natural Resources

5 Acct. No. 972

6 8a Road Improvements within State Parks \$ 2,500,000

7 The purpose of this supplementary appropriation bill is
8 to fund improvements of roads within state parks.

CHAPTER 7

(H. B. 128—By Mr. Seibert)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Sinking Fund Commission, Account No. 170, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a

statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 170, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 FISCAL

4 20—*Sinking Fund Commission*

5 Acct. No. 170

6	2	Current Expenses	\$1,500
7	3	Equipment	6,500
8	4	Total	\$8,000

9 The purpose of this bill is to supplement the aforesaid
10 account and items therein for expenditure in the fiscal year
11 1975-76. Such amount shall be available for expenditure upon
12 the effective date of this bill.

13 Any unexpended balance remaining in the appropriation
14 for "Equipment" at the close of the fiscal year 1975-76 is
15 hereby reappropriated for expenditure during the fiscal year
16 1976-77.

CHAPTER 8

(H. B. 146—By Mr. Seibert)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Treasurer's Office, Account No. 160, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the department of welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 160, chapter eleven, acts of the Legislature regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations from General Revenue.	
3	FISCAL	
4	17—Treasurer's Office	
5	Acct. No. 160	
6	3 Current Expenses	\$ 20,000

7 The purpose of this bill is to supplement the aforesaid
8 account and item therein for expenditure in the fiscal year
9 1975-76. Such amount shall be available for expenditure upon
10 the effective date of this bill.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1976

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